

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, April 7, 2022  
Place: Department A – 510 19th Street  
Bakersfield, California

**ALL APPEARANCES MUST BE TELEPHONIC**  
**(Please see the court's website for instructions.)**

*Pursuant to District Court General Order 631, courthouses for the Eastern District of California were reopened to the public effective June 14, 2021.*

*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 telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.*

**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. [21-10716](#)-A-13     **IN RE: VINOD SAHNI**  
[RSW-1](#)

CONTINUED MOTION TO CONFIRM PLAN  
7-1-2021    [[29](#)]

VINOD SAHNI/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

2. [18-14223](#)-A-13     **IN RE: KRISTIN COLLINS**  
[PK-2](#)

MOTION TO MODIFY PLAN  
1-31-2022    [[67](#)]

KRISTIN COLLINS/MV  
PATRICK KAVANAGH/ATTY. FOR DBT.

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.

On January 31, 2022, Kristin Dolores Collins ("Debtor") filed and served this motion to confirm the first modified chapter 13 plan pursuant to Local Rule of Practice ("LBR") 3015-1(d)(2) and set the motion for hearing on April 7, 2022. Doc. ##67-72. The proposed plan seeks to extend the duration of payments to "up to 84 months," pursuant to the CARES Act. Plan, Doc. #69. However, the CARES Act amendments to 11 U.S.C. § 1329 that allowed for an extension of plan duration of up to 84 months ceased to be effective on March 27, 2022, and § 1329 has reverted to the pre-CARES Act language limiting plan modification to 60 months. See CARES Act Pub L. No. 116-136 § 1113(b); 11 U.S.C. § 1329.

On February 9, 2022, Debtor submitted an application to shorten time for a motion to confirm a plan to be heard on March 10, 2022. DCN PK-3, Doc. ##73-75. On February 10, 2022, Debtor filed and served a motion to confirm a modified plan. DCN PK-4, Doc. ##76-82. That plan was identical to the current plan and was filed after the current plan, but confirmation of the plan was denied for procedural defects. Order, Doc. #87.

In any event, the current motion to modify the plan has not been withdrawn, and although no objection to plan confirmation has been filed, the plan cannot be confirmed because the plan duration of 84 months exceeds the five-year period set forth in 11 U.S.C. § 1329(c) (effective March 27, 2022).

Accordingly, Debtor's motion to confirm her first modified Chapter 13 plan is DENIED.

MOTION TO MODIFY PLAN  
2-15-2022    [\[55\]](#)

ALICE CAMERON/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Denied, creditor's objection will be sustained.

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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). On March 17, 2022, creditor U.S. Bank National Association, as Trustee for Secured Asset Investment Loan Trust Mortgage Pass-Through Certificates Series 2006-4, by and through servicing agent Wells Fargo Bank N.A. ("Creditor") filed an objection to confirmation of the debtor's modified plan. Doc. #61. On March 22, 2022, the chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the modified plan. Doc. #63. 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 nonresponding parties in interest are entered. This matter will proceed as scheduled.

Alice Diana Cameron ("Debtor") filed the First Amended Chapter 13 Plan (the "Plan") on February 15, 2022. Doc. #59. Creditor and Trustee object to confirmation of the Plan. Creditor's Obj., Doc. #61; Tr.'s Obj., Doc. #63. Trustee's objection can be resolved in the order confirming the Plan only if Creditor agrees to sign off on the order. Doc. #63. Creditor's objection centers on the Plan's attempt to reduce the interest rate on Creditor's Class 2 claim. Doc. #61. Because Trustee's objection turns on the resolution of Creditor's objection, the court will address Creditor's arguments.

The Plan provides for Creditor in Class 2(A). Plan, Doc. #59. Class 2 includes all secured claims that are modified by the plan or that have matured or will mature before the plan is completed. Class 2(A) includes claims that are not reduced on the value of collateral. Creditor's claim, secured by a deed of trust on Debtor's property, is set to mature during the bankruptcy on February 1, 2025. Doc. #61.

Debtor's prior chapter 13 plan, confirmed September 10, 2021, also provided for Creditor in Class 2 and called for an interest rate of 5% on Creditor's claim to accrue from month 1. Order, Doc. #45. The current Plan now attempts to reduce the interest rate from 5% to 3.50%. Plan, Doc. #59; Doc. #61. Creditor does not consent to the interest rate reduction and argues that the proposed reduction is unreasonable. Doc. #61. Creditor also contends that under the original plan, Debtor was to pay \$30,000 through February 2022, yet Debtor has only actually paid approximately \$18,000 and is in default. Doc. #61.

Creditor cites to the Supreme Court decision of Till v. SCS Credit Corp., 541 U.S. 465, 480 (2004), to support the argument that a reduction of the interest rate from 5% to 3.50% renders the Plan unconfirmable. Doc. #61.

The Till "formula approach" requires an interest rate "high enough to compensate the creditor for its risk but not so high as to doom the plan." Till v. SCS Credit Corp., 541 U.S. 465, 480 (2004). This is referred to as the "formula" or "prime-plus" rate, which the Supreme Court held best comports with the purposes of the Bankruptcy Code in the chapter 13 context. Id. at 479-80.

It is generally acknowledged that this approach starts with the national prime rate, which is then adjusted based on a number of factors. While the Supreme Court enunciated some factors to consider in adjusting the "prime-plus" rate upward, the Supreme Court also acknowledged some factors contribute to a reduction in risk (though not necessarily a rate less than prime). Till, 541 U.S. at 475 n.12. The Supreme Court in Till also noted that "if the court could somehow be certain a debtor would complete his plan, the prime rate would be adequate to compensate any secured creditors forced to accept cram down loans." Till, 541 U.S. at 479 n.18.

Creditor argues that the 5% interest rate is the appropriate rate. Creditor argues that a reduction to 3.50% is unreasonable given that Debtor has defaulted under the previous plan by failing to make payments under the plan. Doc. #61; see Notice of Default, Doc. #51. As of March 29, 2022, the Wall Street Journal Prime Rate is 3.50%. The court can take judicial notice of the prime rates published in the Wall Street Journal. Stein v. JP Morgan Chase Bank, 297 F. Supp. 2d 286, 290 (S.D.N.Y. 2003); Fed. R. Evid. 201.

Here, there is uncertainty as to Debtor's ability to make payments under the Plan because Debtor was unable to make all payments under the prior plan. Therefore, setting the interest rate on Creditor's Class 2 claim at the current prime rate of 3.50% is unreasonable. Otherwise, the court makes no determination with respect to what a reasonable interest rate would be in this case.

Accordingly, the court is inclined to DENY confirmation of the Plan.

4. [22-10228](#)-A-13      **IN RE: ELIAS GARCIA CAMACHO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
3-18-2022    [\[19\]](#)

\$32.00 FILING FEE PAID 3/23/22

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

DISPOSITION:      The OSC will be vacated.

ORDER:              The court will issue an order.

The record shows that the amendment filing fees have been paid.

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 6  
1-31-2022    [\[37\]](#)

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

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 objection was set for hearing on 44 days' notice pursuant to Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 3007-1(b)(1)(A) may be deemed a waiver of any opposition to the sustaining of the objection. 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 this bankruptcy case, objects to claim no. 6 ("Claim 6") filed by Cavalry SPV I LLC ("Claimant") on the grounds that Claim 6 is unenforceable under California state law and should be entirely disallowed pursuant to 11 U.S.C. § 502(b)(1) and Federal Rule of Bankruptcy Procedure 3007. Tr.'s Obj., Doc. #37.

The court will grant Trustee's request to take judicial notice of Claim 6. The court may take judicial notice of all documents and papers filed in this case. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015).

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. The party objecting to a presumptively valid claim has the burden of presenting evidence to overcome the prima facie showing made by the proof of claim. IRS v. Offord Fin. (In re Medina), 205 B.R. 216, 222 (B.A.P. 9th Cir. 1996). The objecting party must provide "sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.'" Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (quoting In re Holm, 931 F.2d 620, 623 (9th Cir. 1991)). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." Id. (quoting

Ashford v. Consol. Pioneer. Mortg. (In re Consol. Pioneer Mortg.), 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995)).

Claim 6 asserts an unsecured claim of \$1,312.45 stemming from a credit account originally owned by Capital One Bank (USA) National Association. Claim 6. According to the Statement of Account attached to Claim 6, the last transaction on the account occurred on January 20, 2011. Claim 6. Claim 6 also lists the last payment date on the account as January 20, 2011, and the account charge off date as September 6, 2011. Claim 6.

Trustee contends that the relevant statute of limitations in California, Cal. Civ. Proc. Code § 337, bars Claimant's action to recover on a contract, obligation, or liability founded on an instrument in writing after four years. Tr.'s Mot., Doc. #37. Trustee also notes that an action based on an oral contract is barred after two years under Cal. Civ. Proc. Code § 339. Doc. #37. Therefore, Trustee argues, Claim 6 must be disallowed entirely under § 502(b)(1).

A claim cannot be allowed under § 502(b)(1) if it is unenforceable under nonbankruptcy law. Durkin v. Benedor Corp. (In re G.I. Indus.), 204 F.3d 1276, 1281 (9th Cir. 2000). Having reviewed Claim 6 and Trustee's objection, the court finds that Trustee rebutted the prima facie validity of Claim 6. Claimant has not responded.

Accordingly, Trustee's objection is SUSTAINED.

6. [21-10838](#)-A-13      **IN RE: STEPHEN/VALERIE COOKE**  
[MHM-2](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 14  
1-31-2022    [\[41\]](#)

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

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 objection was set for hearing on 44 days' notice pursuant to Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 3007-1(b)(1)(A) may be deemed a waiver of any opposition to the sustaining of the objection. 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 this bankruptcy case, objects to claim no. 14 ("Claim 14") filed by Cavalry SPV I LLC ("Claimant") on the grounds that Claim 14 is unenforceable under California state law and should be entirely disallowed pursuant to 11 U.S.C. § 502(b)(1) and Federal Rule of Bankruptcy Procedure 3007. Tr.'s Obj., Doc. #41.

The court will grant Trustee's request to take judicial notice of Claim 14. The court may take judicial notice of all documents and papers filed in this case. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015).

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. The party objecting to a presumptively valid claim has the burden of presenting evidence to overcome the prima facie showing made by the proof of claim. IRS v. Offord Fin. (In re Medina), 205 B.R. 216, 222 (B.A.P. 9th Cir. 1996). The objecting party must provide "sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.'" Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (quoting In re Holm, 931 F.2d 620, 623 (9th Cir. 1991)). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." Id. (quoting Ashford v. Consol. Pioneer. Mortg. (In re Consol. Pioneer Mortg.), 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995)).

Claim 14 asserts an unsecured claim of \$371.88 stemming from a credit account originally owned by HSBC Bank Nevada N.A. Claim 14. According to the Statement of Account attached to Claim 14, the last transaction on the account occurred on January 20, 2011. Claim 14. Claim 14 also lists the last payment date on the account as January 20, 2011, and the account charge off date as August 31, 2011. Claim 14.

Trustee contends that the relevant statute of limitations in California, Cal. Civ. Proc. Code § 337, bars Claimant's action to recover on a contract, obligation, or liability founded on an instrument in writing after four years. Tr.'s Mot., Doc. #41. Trustee also notes that an action based on an oral contract is barred after two years under Cal. Civ. Proc. Code § 339. Doc. #41. Therefore, Trustee argues, Claim 14 must be disallowed entirely under § 502(b)(1).

A claim cannot be allowed under § 502(b)(1) if it is unenforceable under nonbankruptcy law. Durkin v. Benedor Corp. (In re G.I. Indus.), 204 F.3d 1276, 1281 (9th Cir. 2000). Having reviewed Claim 14 and Trustee's objection, the court finds that Trustee rebutted the prima facie validity of Claim 14. Claimant has not responded.

Accordingly, Trustee's objection is SUSTAINED.



OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 15  
1-31-2022    [\[45\]](#)

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

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 objection was set for hearing on 44 days' notice pursuant to Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 3007-1(b)(1)(A) may be deemed a waiver of any opposition to the sustaining of the objection. 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 this bankruptcy case, objects to claim no. 15 ("Claim 15") filed by Cavalry SPV I LLC ("Claimant") on the grounds that Claim 15 is unenforceable under California state law and should be entirely disallowed pursuant to 11 U.S.C. § 502(b)(1) and Federal Rule of Bankruptcy Procedure 3007. Tr.'s Obj., Doc. #45.

The court will grant Trustee's request to take judicial notice of Claim 15. The court may take judicial notice of all documents and papers filed in this case. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015).

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. The party objecting to a presumptively valid claim has the burden of presenting evidence to overcome the prima facie showing made by the proof of claim. IRS v. Offord Fin. (In re Medina), 205 B.R. 216, 222 (B.A.P. 9th Cir. 1996). The objecting party must provide "sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.'" Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (quoting In re Holm, 931 F.2d 620, 623 (9th Cir. 1991)). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." Id. (quoting



Ashford v. Consol. Pioneer. Mortg. (In re Consol. Pioneer Mortg.), 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995)).

Claim 15 asserts an unsecured claim of \$531.57 stemming from a credit account originally owned by HSBC Bank Nevada N.A. Claim 15. According to the Statement of Account attached to Claim 15, the last transaction on the account occurred on January 20, 2011. Claim 15. Claim 15 also lists the last payment date on the account as January 20, 2011, and the account charge off date as August 31, 2011. Claim 15.

Trustee contends that the relevant statute of limitations in California, Cal. Civ. Proc. Code § 337, bars Claimant's action to recover on a contract, obligation, or liability founded on an instrument in writing after four years. Tr.'s Mot., Doc. #45. Trustee also notes that an action based on an oral contract is barred after two years under Cal. Civ. Proc. Code § 339. Doc. #45. Therefore, Trustee argues, Claim 15 must be disallowed entirely under § 502(b)(1).

A claim cannot be allowed under § 502(b)(1) if it is unenforceable under nonbankruptcy law. Durkin v. Benedor Corp. (In re G.I. Indus.), 204 F.3d 1276, 1281 (9th Cir. 2000). Having reviewed Claim 15 and Trustee's objection, the court finds that Trustee rebutted the prima facie validity of Claim 15. Claimant has not responded.

Accordingly, Trustee's objection is SUSTAINED.

8. [18-15139](#)-A-13      **IN RE: AARON/ANNIE LUCAS**  
[PK-4](#)

MOTION TO MODIFY PLAN  
3-3-2022    [[128](#)]

AARON LUCAS/MV  
PATRICK KAVANAGH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

9. [18-15139](#)-A-13      **IN RE: AARON/ANNIE LUCAS**  
[PK-5](#)

MOTION TO INCUR DEBT  
3-10-2022    [[136](#)]

AARON LUCAS/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 movant has done here.

Aaron Anthony Lucas and Annie Rose Lucas (together, "Debtors"), the chapter 13 debtors in this case, move the court for an order authorizing Debtors to incur new debt. Doc. #136. Debtors want to borrow \$320,000 secured by their residence at 12202 Trackside Drive, Bakersfield, CA 93312. Doc. #136. With the funds, Debtors will pay off the deed of trust, which Debtors state has a current balance of \$207,000. Decl. of Annie Lucas, Doc. #138. The new loan provides for a reduced interest rate and is secured only by Debtors' residence, and there are no other liens against the property. Id. With the remaining funds, Debtors expect to pay off their chapter 13 plan and purchase a vehicle. Id.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . 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 opposition was filed. There is no indication that Debtors are not current on their chapter 13 plan payments or that the chapter 13 plan is in default. Debtors will use the proceeds of the loan to exit their chapter 13, purchase a vehicle, and reduce their monthly mortgage payment.

Accordingly, this motion is GRANTED. Debtors are authorized, but not required, to incur new debt in a manner consistent with the motion.

10. [18-15139](#)-A-13      **IN RE: AARON/ANNIE LUCAS**  
[PK-6](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)  
3-17-2022    [\[144\]](#)

PATRICK KAVANAGH/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 Moving Party shall submit a proposed order after the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

Patrick Kavanagh ("Movant"), counsel for Aaron Anthony Lucas and Annie Rose Lucas (together, "Debtors"), the debtors in this chapter 13 case, requests allowance of final compensation in the amount of \$1,997.87 for services rendered June 12, 2021 through case closing. Doc. #144. Debtors' confirmed plan provides for \$6,000.00 in attorney's fees to be paid through the plan. Plan, Doc. ##63, 110. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of \$7,500, of which \$5,510 was payable through the plan. Order, Doc. #127. Debtors have proposed a second modified plan, not yet confirmed, that would increase attorney fees paid through the plan to \$7,000. Doc. #133.

Movant explains that, while a fee application at this time would not normally be filed, Debtors are attempting to exit their chapter 13 plan early. Ex. A, Doc. #146. Movant's final fee application and the fees requested therein were submitted, it appears, assuming that the proposed second modified plan would be confirmed. Id. However, the chapter 13 trustee has objected to plan confirmation. See Doc. #149.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and filing motions to borrow, to modify the chapter 13 plan, and the fee application; (2) administering the case and communicating with Debtors; and (3) preparing for discharge and case closing. Exs., Doc. #146. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, in addition to compensation requested by this motion in the amount of \$1,997 and to be paid in a manner consistent with the terms of the confirmed plan.

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)  
2-22-2022    [\[48\]](#)

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 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 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.

Patrick Kavanagh ("Movant"), counsel for Dennis Demetrio Marroquin ("Debtor"), the debtor in this chapter 13 case, requests allowance of final compensation in the amount of \$5,000 for services rendered April 11, 2021 through case closing. Doc. #48. Debtor's confirmed plan provides for \$5,500.00 in attorney's fees. Plan, Doc. ##27, 36. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of \$3,741.99.00, which included a \$2,000 retainer. Order, Doc. #25; Doc. #48. Since entry of that order, the court granted Movant \$2,000 in attorney fees payable to Movant resulting from a successful objection to proof of claim. Order, Doc. #36.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) claim administration and objections; (2) case administration; and (3) preparation for discharge and case closing. Exs., Doc. #50. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim bases, in addition to compensation requested by this motion in the

amount of \$5,000 to be paid in a manner consistent with the terms of the confirmed plan.

12. [22-10257](#)-A-13     **IN RE: STACY KAISER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
3-9-2022     [[10](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.  
\$313.00 FILING FEE PAID 3/10/22

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

DISPOSITION:     The OSC will be vacated.

ORDER:     The court will issue an order.

The record shows that the filing fees now due have been paid.

13. [17-14163](#)-A-13     **IN RE: JOHN/RITA CORSON**  
[PK-4](#)

CONTINUED MOTION TO MODIFY PLAN  
1-17-2022     [[103](#)]

JOHN CORSON/MV  
PATRICK KAVANAGH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Denied.

ORDER:     The court will issue an order.

Debtors John Peter Corson and Rita Gail Corson (collectively, "Debtors") filed and served this motion to confirm the second modified chapter 13 plan pursuant to Local Rule of Practice ("LBR") 3015-1(d)(2) and set for hearing on March 3, 2022. Doc. ##103-09. The chapter 13 trustee ("Trustee") filed an opposition to Debtors' motion. Doc. #110. The court continued this matter to April 7, 2022 and ordered Debtors to file and serve a written response to Trustee's objection by March 17, 2022; or if Debtors elected to withdraw this plan, then Debtors had to file, serve, and set for hearing a confirmable modified plan by March 24, 2022. Order, Doc. #113.

Having reviewed the docket in this case, the court finds Debtors have not voluntarily converted this case to Chapter 7 or dismissed this case, and Trustee's objection has not been withdrawn.

On April 5, 2022, Debtors submitted a status report regarding the modified plan. Doc. #116. Per the status report, Debtors conclude that the plan is not confirmable. Debtors also request that the case not be dismissed. However, there is no pending motion to dismiss on the docket. In denying confirmation of Debtors' second modified chapter 13 plan, the court makes no determination

regarding dismissal of Debtors' bankruptcy case. Debtors' case will remain pending until dismissed.

Accordingly, Debtors' motion to confirm their second modified Chapter 13 plan is DENIED on the grounds set forth in Trustee's opposition.

14. [19-11865](#)-A-13     **IN RE: MANUEL DURAN**  
[RSW-1](#)

MOTION TO MODIFY PLAN  
2-14-2022    [\[50\]](#)

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

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

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 chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to confirm the first modified the chapter 13 plan. Tr.'s Opp'n, Doc. #58. 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 nonresponding parties in interest are entered. This matter will proceed as scheduled.

The court is inclined to GRANT the motion to confirm the second modified chapter 13 plan so long as the increase in monthly plan payments may be included in the order confirming the plan.

Manuel L. Duran ("Debtor") filed his first modified chapter 13 plan (the "Plan") on February 14, 2022. Doc. #54. Trustee objects to confirmation of the Plan because the Plan will not fund in the remaining 27 months of the Plan. Doc. #58. Trustee contends that monthly plan payments would need to increase to \$1,387 beginning with the March 2022 payment to fund in the remaining 27 months of the Plan. Doc. #58. On March 29, 2022, Debtor filed a reply agreeing to the increase in the monthly plan payment as stated in Trustee's opposition. Doc. #60. Debtor's amended Schedules I & J show monthly net income of \$1,326.93, which is just shy of the proposed increase. Doc. #56. Trustee's opposition has not been withdrawn. If Trustee consents at the hearing, the court is inclined to GRANT the motion to confirm the first modified Plan on the condition that the order confirming the plan provide for the increased monthly plan payment beginning with the payment due for March 2022.

15. [18-14166](#)-A-13     **IN RE: DOUGLAS NEWHOUSE**  
[DMG-8](#)

MOTION FOR ENTRY OF DISCHARGE  
3-23-2022    [[177](#)]

DOUGLAS NEWHOUSE/MV  
D. GARDNER/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 Moving Party shall submit a proposed 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.

D. Max Gardner ("Movant"), as attorney for Douglas Andrew Newhouse ("Debtor"), the deceased chapter 13 debtor, requests the court enter an order granting Debtor's discharge and waive the § 1328 certification requirements. Doc. #177.

Upon the death of a debtor in chapter 13, Federal Rule of Bankruptcy Procedure 1016 provides that the case may be dismissed or may proceed and be concluded in the same manner, so far as possible, as though the death had not occurred upon a showing that further administration is possible and in the best interest of the parties. Debtor died on October 28, 2021 of prostate cancer. Decl. of Franz Drefer, Doc. #179; Ex. A, Doc. #180.

A notice of completed plan payments was filed on November 24, 2021. Doc. #163. This case was closed without a discharge on February 10, 2022 because Debtor had not filed a certificate of completion of financial management course or the form EDC 3-190 *Debtor's 11 U.S.C. § 1328 Certificate*. Doc. #173.

With respect to a waiver of Debtor's certification requirements for entry of discharge under 11 U.S.C. § 1328, Movant states that Debtor has no child or spousal support obligations, this is Debtor's sole bankruptcy case, and Debtor was never charged with or convicted of a felony. Doc. #177. Debtor completed his chapter 13 plan payments before his death, but was unable to sign the required paperwork to complete the certifications required by 11 U.S.C. § 1328 due to his illness. Decl. of Franz Drefer, Doc. #179.

The court finds that waiving the § 1328 certificates so that an entry of discharge may be entered is in the best interest of the parties and creditors. The chapter 13 plan was completed and there is no further administration required from Debtor.

Accordingly, Movant's application is GRANTED. Movant's motion to waive § 1328 certification requirements is GRANTED.



16. [21-11969](#)-A-13     **IN RE: MAE MAGSBY**  
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE  
11-2-2021    [\[18\]](#)

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

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

DISPOSITION:        Continued to May 5, 2022 at 9:00 a.m.

ORDER:                The court will issue an order.

Pursuant to the chapter 13 trustee's status report filed on March 31, 2022 (Doc. #53), the hearing on the motion to dismiss will be continued to May 5, 2022 to permit the debtor time to convert this bankruptcy case. If this case has not been converted to chapter 7 by the next hearing, the court is inclined to grant this motion to dismiss.

17. [21-11969](#)-A-13     **IN RE: MAE MAGSBY**  
[RSW-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF WILMINGTON SAVINGS FUND SOCIETY  
11-24-2021    [\[22\]](#)

MAE MAGSBY/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
ORDER,    DOC # 51

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

DISPOSITION:        Dropped from calendar.

NO ORDER REQUIRED.

The motion was resolved by stipulation and order entered on March 24, 2022. Doc. #51.

CONTINUED MOTION TO DISMISS CASE  
11-17-2021    [\[22\]](#)

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

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

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 to dismiss was originally filed by the chapter 13 trustee ("Trustee") on November 17, 2021 and set for hearing on January 6, 2022 at 9:00 a.m. Doc. ##22-25. Trustee moved to dismiss for: (1) unreasonable delay by the debtor that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1); and (2) failure to make all payments due under the plan pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4). Doc. #22. On December 23, 2021, Shannon Elaine Simpson ("Debtor") responded to Trustee's motion stating that a modified chapter 13 plan had been filed curing Debtor's default in plan payments. Doc. #39.

The hearing on this matter was continued to February 3, 2022 to track with the hearing on Debtor's motion to confirm the modified plan. Order, Doc. #42. At the confirmation hearing on February 3, 2022, Trustee stated Debtor's proposed plan was not confirmable and that a new plan and a new budget would need to be proposed to resolve feasibility issues. The court denied confirmation of the Debtor's modified plan. Order, Doc. #57.

Regarding the Trustee's motion to dismiss, at the hearing on February 3, 2022, Trustee represented that Debtor remained delinquent on payments, although counsel for Debtor indicated that an electronic payment should be processing. Court Audio, Doc. #54. In any event, it appeared that Debtor would either remain delinquent or quickly become delinquent once again for the month of February 2022. Id. When asked what to do about this case, Debtor's counsel stated that dismissal for failure to confirm a plan would be appropriate if no motion to confirm a modified plan were set for hearing on April 7, 2022. Id. Debtor's counsel opposed dismissal for failure to make plan payments. Id. Debtor commenced this bankruptcy case on September 11, 2021. Doc. #1.

A review of the docket shows that no motion to confirm a modified plan has been filed and there is no such motion scheduled for the April 7, 2022 calendar. 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 by debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to timely file a confirmable modified plan.

Debtor's Schedules A/B, C, and D show that Debtor's assets are significantly over encumbered and, to the extent available, claimed as exempt. Doc. #1. Because no funds are available to distribute to unsecured creditors in chapter 7, the court finds that dismissal, rather than conversion, is in the best interests of creditors and the estate.

Accordingly, this motion will be GRANTED. The case will be dismissed.

19. [21-12678](#)-A-13     **IN RE: DONALD/MICHELE REYNOLDS**  
[MHM-2](#)

MOTION TO DISMISS CASE  
2-11-2022    [\[29\]](#)

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

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

DISPOSITION:     Granted.

ORDER:             The court will issue an order.

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 creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss the chapter 13 bankruptcy case of Donald Eugene Reynolds and Michele Lynn Reynolds (together, "Debtors") pursuant to 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors. Doc #35. Debtors did not oppose.

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 by Debtors. Debtors failed to appear at the scheduled 341 meeting of creditors and have not confirmed a chapter 13 plan since filing this bankruptcy case on November 22, 2021.

A review of Debtors' Schedules A/B and D shows that Debtors' significant assets, including vehicles and real property, are over encumbered. Schedules A/B & C, Doc. #21. Debtors claim exemptions in the remaining assets. Id. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

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

20. [19-12898](#)-A-13     **IN RE: JEFFREY VANDERNOOR**  
[RSW-4](#)

MOTION TO MODIFY PLAN  
2-15-2022    [\[94\]](#)

JEFFREY VANDERNOOR/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to May 5, 2022 at 9:00 a.m.

ORDER:             The court will issue an order.

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 chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the second modified chapter 13 plan. Tr.'s Opp'n, Doc. #102. Unless this case is voluntarily converted to Chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than April 21, 2022. 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 debtor's position. Trustee shall file and serve a reply, if any, by April 28, 2022.

If the debtor elects to withdraw this 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 April 28, 2022. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

1. [21-12810](#)-A-7     **IN RE: RENEWABLE LEGACY LLC**  
[FW-5](#)

MOTION TO SELL, AND MOTION TO PAY  
3-17-2022    [\[44\]](#)

PETER FEAR/MV  
JUSTIN HARRIS/ATTY. FOR DBT.  
PETER SAUER/ATTY. FOR MV.

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

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.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Although not required, on April 4, 2022, the first deed of trust holder filed a conditional non-opposition to the granting of the motion. Doc. #52. Unless further opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion subject to higher and better bids at the hearing subject to the conditions in the conditional non-opposition. If further opposition is presented at the hearing, the court will consider such 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.

Peter Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Renewable Legacy LLC ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of real property located at 840B E. Worth Avenue, Porterville, CA 93257 (the "Property") to Gasper Eric Soria and Maricela Perez de Soria (collectively, "Buyers") for the purchase price of \$851,000.00, subject to higher and better bids at the hearing. Doc. #44. Trustee states that a preliminary title report shows that there are numerous encumbrances attaching to the Property. Doc. #44; Decl. of Trustee, Doc. #47. Trustee also seeks authorization to pay a commission for the sale to Berkshire Hathaway HomeServices California Realty ("Broker"). Doc. #44.

Selling Property of Estate under 11 U.S.C. § 363(b)(1) Permitted

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, 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)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting

the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Ex. C, Doc. #46. The agent for Broker believes that the sales price of \$851,000 is a fair and reasonable value for the Property based on experience as a licensed real estate broker. Decl. of Robert Casey, Doc. #48. Broker marketed the Property for sale and has a signed contract with Buyers for \$851,000. Id. Trustee has accepted Buyers' offer conditioned upon the court's approval and better and higher offers at the hearing. Ex. A, Doc. #46. The sale is "as is, where is" with no warranties or representations of any nature. Id.

Based upon estimates obtained from the preliminary title report, the sales contract, and charges common in the industry, Trustee estimates a benefit to the estate of \$30,915.95. Tr. Decl., Doc. #47. Trustee expects to pay a 6% commission to Broker and estimates \$4,498.05 in costs of sale. Id.

Property taxes are overdue, and there are liens or encumbrances on the Property. Id. The title report discloses overdue property taxes on the Property currently owed or in default totaling approximately \$14,628.83. Tr. Decl., Doc. #47; Ex. B, Doc. #46. There is also a first deed of trust entitled to an estimated payoff of \$624,004.33. Tr. Decl., Doc. #47. Both of these obligations will be paid in full from escrow. Doc. #44. The holder of the first deed of trust does not oppose the sale subject to certain conditions, which the court is inclined to require as part of granting the motion. Doc. #52.

The United States recorded a lis pendens that attached to the Property. Tr. Decl., Doc. #47; Ex. C, Doc. #46. Trustee and the United States have stipulated to liquidate the lis pendens whereby the United States will receive \$127,000 from Property sale proceeds, plus 50% of any proceeds exceeding \$850,000. Id. The funds will be deposited with the Clerk of the U.S. District Court within two business days of the closing to be held as the sub res of the Property subject to forfeiture in a criminal case. Id. The United States will release the lis pendens on the Property at the close of escrow. Ex. C, Doc. #46. If the Property sells for the expected \$851,000, the stipulated amount to United States is \$127,500. Tr. Decl., Doc. #47. The United States consents to the sale of the Property. Ex. C, Doc. #46.

The trustee may sell property under § 363(b) free and clear of any interest of an entity other than the estate only if: (1) applicable nonbankruptcy law permits the sale; (2) such entity consents; (3) the interest is a lien and the price at which the property is to be sold is greater than the aggregate value of all liens on the property; (4) the interest is in bona fide dispute; or (5) the entity could be compelled to accept a money satisfaction of the interest. 11 U.S.C. § 363(f).

The Property will be sold for \$851,000, subject to better and higher offers at the hearing. The deed of trust and property taxes will be paid in full from escrow. The United States consents to the sale of the Property. It appears that the sale of the estate's interest in the Property is in the best interests of the estate, the Property will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing and the conditions set forth in the conditional non-opposition filed by the holder of the first

deed of trust, the court will GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b) and (f).

#### Compensation to Broker

Trustee also seeks authorization to pay Broker a commission for the sale of the Property. This court has determined that employment of Broker is in the best interests of the estate and has previously authorized a percentage commission payment structure pursuant to 11 U.S.C. § 328. Order, Doc. #35; Doc. #30.

Trustee seeks to pay Broker a 6% commission on the sale of the Property as the real estate broker for the sale. Tr. Decl., Doc. #47. Trustee believes that a 6% commission is reasonable compensation for services performed by Broker because it is only through Broker's work in this matter that the sale is currently on the table. Tr. Decl., Doc. #47. If the Property is sold to someone other than Buyers, Broker will split the 6% fee with the buyer's agent. Id. Trustee estimates that Broker's commission for the sale of the Property will be \$51,060. Id. The court finds the compensation sought is reasonable, actual, and necessary.

#### Conclusion

Accordingly, subject to overbid offers made at the hearing and the conditions set forth in the conditional non-opposition filed by the holder of the first deed of trust, the court will GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b)(1), free and clear of the lis pendens of the United States. Trustee is authorized to pay Broker for services as set forth in the motion.

2. [21-12541](#)-A-7     **IN RE: RODOLFO VALDIVIA AND MARGARITA GUTIERREZ SANCHEZ**  
[RSW-1](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.  
2-8-2022    [\[19\]](#)

RODOLFO VALDIVIA/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 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 movant has done here.

Rodolfo Valdivia and Margarita Gutierrez Sanchez (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Wells Fargo Bank N.A. ("Wells Fargo") and, by separate motion also set for hearing on April 7, 2022, the judicial lien of Capital One Bank (USA) N.A. ("Capital One"), on Debtors' residential real property commonly referred to as 2024 Meadow Ave., Delano, CA 93215 (the "Property"). Doc. #19; Doc. #24; Schedule C, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed the bankruptcy petition on October 30, 2021. A judgment was entered against Rodolfo Valdivia in the amount of \$6,030.51 in favor of Capital One on September 13, 2018. Ex. 4, Doc. #27. The abstract of judgment was recorded pre-petition in Kern County on December 4, 2019 as document number 219162526. Ex. 4, Doc. #27. A separate judgment was entered against Rodolfo Valdivia in the amount of \$7,335.73 in favor of Wells Fargo on January 11, 2018. Ex. 4, Doc. #22. The abstract of judgment was recorded pre-petition in Kern County on November 8, 2018 as document number 218146900. Ex. 4, Doc. #22. The liens attached to Debtors' interest in the Property located in Kern County. Doc. #21; Doc. #26.

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

The Property also is encumbered by a first deed of trust in favor of Freedom Mortgage Corporation in the amount \$212,356. Schedule D, Doc. #1. Debtors claimed an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$352,100. Schedule A/B, Doc. #1.

Applying the statutory formula to the most junior lien, held by Capital One, first:

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Amount of Capital One's judicial lien		\$6,030.51
Total amount of all other liens on the Property (including senior judicial liens)	+	219,691.73
Amount of Debtors' claim of exemption in the Property	+	300,000.00
		\$525,722.24
Value of Debtors' interest in the Property absent liens	-	352,100.00
Amount Calvary's lien impairs Debtor's exemption		\$173,622.24

The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property		\$352,100.00
Total amount of all other liens on the Property (including senior judicial liens)	-	219,691.73
Amount of Debtors' claim of exemption in the Property	-	300,000.00
Remaining equity for Capital One's judicial lien		(\$167,591.73)
Amount of Capital One's judicial lien	-	6,030.51
Extent Debtors' exemption impaired		(\$173,622.24)

After disposing of Capital One's junior lien, the court finds there is insufficient equity to support Capital One's judicial lien recorded December 4, 2019.

Continuing in reverse order of priority and applying the statutory formula to Wells Fargo's senior judicial lien:

Amount of Wells Fargo's judicial lien		\$7,335.73
Total amount of all other liens on the Property (excluding junior judicial liens)	+	212,356.00
Amount of Debtors' claim of exemption in the Property	+	300,000.00
		\$519,691.73
Value of Debtors' interest in the Property absent liens	-	352,100.00
Amount Wells Fargo's lien impairs Debtors' exemption		\$167,591.73

The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property		\$352,100.00
Total amount of all other liens on the Property (excluding junior judicial liens)	-	212,356.00
Amount of Debtors' claim of exemption in the Property	-	300,000.00
Remaining equity for Wells Fargo's judicial lien		(\$160,256.00)
Amount of Wells Fargo's judicial lien	-	7,335.73
Extent Debtors' exemption impaired		(\$167,591.73)

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Wells Fargo's judicial lien. Therefore, the fixing of the judicial liens of Wells Fargo and Capital One impair Debtors' exemption in the Property and their fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A.  
2-8-2022    [\[24\]](#)

RODOLFO VALDIVIA/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 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 movant has done here.

Rodolfo Valdivia and Margarita Gutierrez Sanchez (together, "Debtors"), the debtors in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Capital One Bank (USA) N.A. ("Capital One"), and by separate motion also set for hearing on April 7, 2022, the judicial lien of Wells Fargo Bank N.A. ("Wells Fargo"), on Debtors' residential real property commonly referred to as 2024 Meadow Ave., Delano, CA 93215 (the "Property"). Doc. #19; Doc. #24; Schedule C, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed the bankruptcy petition on October 30, 2021. A judgment was entered against Rodolfo Valdivia in the amount of \$6,030.51 in favor of Capital One on September 13, 2018. Ex. 4, Doc. #27. The abstract of judgment was recorded pre-petition in Kern County on December 4, 2019 as document number 219162526. Ex. 4, Doc. #27. A separate judgment was entered against Rodolfo Valdivia in the amount of \$7,335.73 in favor of Wells Fargo on January 11, 2018. Ex. 4, Doc. #22. The abstract of judgment was recorded pre-petition in Kern County on November 8, 2018 as document number 218146900. Ex. 4, Doc. #22.

The liens attached to Debtors' interest in the Property located in Kern County. Doc. #21; Doc. #26.

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

The Property also is encumbered by a first deed of trust in favor of Freedom Mortgage Corporation in the amount \$212,356. Schedule D, Doc. #1. Debtors claimed an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$352,100. Schedule A/B, Doc. #1.

Applying the statutory formula to the most junior lien, held by Capital One, first:

Amount of Capital One's judicial lien		\$6,030.51
Total amount of all other liens on the Property (including senior judicial liens)	+	219,691.73
Amount of Debtors' claim of exemption in the Property	+	300,000.00
		\$525,722.24
Value of Debtors' interest in the Property absent liens	-	352,100.00
Amount Calvary's lien impairs Debtor's exemption		\$173,622.24

The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property		\$352,100.00
Total amount of all other liens on the Property (including senior judicial liens)	-	219,691.73
Amount of Debtors' claim of exemption in the Property	-	300,000.00
Remaining equity for Capital One's judicial lien		(\$167,591.73)
Amount of Capital One's judicial lien	-	6,030.51
Extent Debtors' exemption impaired		(\$173,622.24)

After disposing of Capital One's junior lien, the court finds there is insufficient equity to support Capital One's judicial lien recorded December 4, 2019. Therefore, the fixing of the judicial liens Capital One impairs Debtors' exemption in the Property and the fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

MOTION TO PAY  
3-16-2022    [\[56\]](#)

RANDELL PARKER/MV  
LEONARD WELSH/ATTY. FOR DBT.  
LISA HOLDER/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 the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

Randell Parker ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Konark Ranches LLC, moves the court for an order authorizing the payment of \$4,737.74 to the Franchise Tax Board as an administrative tax expense and for authorization to pay an additional amount up to \$1,000.00 for any unexpected tax liabilities without further court approval. Doc. #56.

Section 503(b)(1)(B) of the Bankruptcy Code states that, after notice and a hearing, administrative expenses shall be allowed for "any tax [] incurred by the estate, whether secured or unsecured, including property taxes . . . except a tax of a kind specified in section 507(a)(8) of this title[.]" "Pursuant to this subsection of § 503, a claim is entitled to allowance as an administrative expense if two requirements are satisfied: the tax must be incurred by the estate and the tax must not be a tax of a kind specified in § 507[(a)(8)]." Towers for Pacific-Atlantic Trading Co. v. United States (In re Pacific-Atlantic Trading Co.), 64 F.3d 1292, 1298 (9th Cir. 1995). Here, Trustee has shown that the tax was incurred by the estate, and the tax is not a tax of the kind specified in § 507(a)(8).

Accordingly, this motion will be GRANTED. Trustee is authorized to pay an additional amount not to exceed \$1,000 for any unexpected tax liability incurred by the estate and not for a tax of a kind specified in § 507(a)(8).

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH STAR NUT, CO., PRAVEEN RAVELA, ROHITH YALAVARTHI, AND RAJKISHAN ARIKAPUDI  
3-16-2022    [\[62\]](#)

RANDELL PARKER/MV  
LEONARD WELSH/ATTY. FOR DBT.  
LISA HOLDER/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 the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

Randell Parker ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Konark Ranches LLC ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the settlement and compromise of Trustee's claims against Star Nut Co., Praveen Ravela, Rohith Yalavarthi, and Rajkishan Arikapudi (collectively, "Settling Defendants") asserted in the adversary proceeding initiated by Trustee, Adv. Proc. 20-01061 (the "Adversary Proceeding"). Doc. #62; see Exs. A, B, & C, Doc. #65.

Trustee commenced the Adversary Proceeding against Settling Defendants asserting claims under 11 U.S.C. §§ 547 and 548, declaratory relief, and producer's lien law (together, "Claims"). Doc. #62. Debtor's representatives asserted that proceeds of Debtor's 2017 and 2018 almond crops had been diverted to benefit defaulted defendants Shalini's Ag LLC, Naveen Kumar Ravela, and others. Tr. Decl., Doc. #64. Debtor's representatives asserted that Shalini's Ag LLC and Naveen Ravela had used a new almond processor, Star Nut Co., and had delivered Debtor's almonds to that processor, and had then applied the proceeds of the almond's sale against Shalini's Ag LLC and Naveen Ravela's own debts owed to the processor. Id. Trustee commenced the Adversary Proceeding and Settling Defendants answered. Id. Trustee and Settling Defendants engaged in discovery, and Trustee believes that resolving all Claims asserted in the Adversary Proceeding with respect to Settling Defendants for a payment of \$82,500 is in the estate's best interests. Id. Of the \$82,500, Star Nut Co. will pay \$75,000, and the remaining Settling Defendants will each pay \$2,500, due within 14 days after entry of the order approving this motion. Doc. #62.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the

litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #62. Trustee believes that he obtained the best settlement possible under the facts and that the settlement is fair and equitable. Tr. Decl., Doc. #64. The settlement is made in contemplation of facts put together by Trustee, and the legal issues of apparent authority, good faith, and others create uncertainty such that settlement is preferable to continued litigation. Id. Potential difficulties in collection, including the possibility of bankruptcy filings by Settling Defendants, weighs heavily in favor of approving the settlement. Id. If litigation continued, Trustee believes it is possible that the estate would net less than \$82,500 after deducting costs of litigation. Id. Trustee would need to conduct multiple depositions and engage experts. Id. Star Nut Co. has moved to withdraw the reference, and settlement will avoid the delay and expense of litigating outside of bankruptcy court. Id. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, the motion is GRANTED, and the settlement between Trustee and Settling Defendants on the terms set forth in this motion and Exhibits A, B, & C at Doc. #65 is approved.

6. 21-12772-A-7      **IN RE: ROBERT CARR**  
JMV-1

MOTION TO SELL  
3-16-2022    [19]

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

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

DISPOSITION:              Granted.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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 subject to higher and better bids at



the hearing. 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.

Jeffrey Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Robert Leroy Carr ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a the following property (collectively, the "Property"): (1) 2020 Chevrolet Traverse; (2) 2018 GMC Sierra 1500; (3) 2019 Chevrolet Silverado; (4) Beretta PX Storm .40 Cal; (5) Smith and Wesson M&P Shield 9mm; (6) Bersa Fire Storm .380 ACP; (7) Walther Arms P22 .22LR; (8) Hi Point 9mm carbine; (9) Springfield Armory Saint AR-15 223/556; (10) Mossberg MMR AR-15 223/556; (11) Winchester SXP 12 Gauge Shotgun; (12) Cricket .22LR; (13) Mossberg Patriot 308; (14) Mossberg 715T .22LR semi-automatic rifle; (15) Rock Island VR 80 tactical 12 gauge shotgun; (16) Uberti 1873 Cattleman Hombre .357; (17) Hi Point C9 9mm; and (18) Smith and Wesson SDVE 9mm. Doc. #19. The Property will be sold subject to overbid at hearing as one lot. Deducting the encumbrances on the Property and Debtor's allowed exemptions in the Property, the Property will be sold to Debtor for the purchase price of \$8,371.14, subject to higher and better bids at the hearing. Doc. #19. To satisfy encumbrances, exemptions, and costs of sale, overbid offers must exceed \$113,225. Doc. #19.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, 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)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Tr. Decl., Doc. #21. Trustee performed due diligence in researching the value of the Property. Id. Trustee's acceptance of Debtor's offer to purchase the Property for \$8,371.14 was calculated as follows: Trustee believes the value of the Property is \$132,500, less costs of sale of \$19,275, less lease payoffs of \$84,688.91, less sales tax of 7.25%, less exemptions of \$14,025, leaves a total of \$8,371.14. Tr. Decl., Doc. #21. Trustee's proposed sale to Debtor is made in consideration of the full and fair market value of the Property. Doc. #21. The court recognizes that no commission will need to be paid because the sale is to Debtor.

It appears that the sale of the estate's interest in the Property is in the best interests of the estate, the Property will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Property to Debtor on the terms set forth in the motion.

MOTION TO DISMISS CASE  
3-4-2022    [\[15\]](#)

EDGAR MCALISTER/MV  
NEIL SCHWARTZ/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 movant has done here.

Neil E. Schwartz, counsel for the chapter 7 debtor Edgar McAlister ("Debtor"), moves to dismiss this chapter 7 case on the grounds that Debtor was granted a discharge in a case commenced within eight years before the date of the filing of the petition. Doc. #15. Debtor is not eligible for discharge under 11 U.S.C. § 727(a)(8). Doc. #15.

A debtor does not have an absolute right to dismiss a voluntary chapter 7 case. Bartee v. Ainsworth (In re Bartee), 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004). Section 707 of the Bankruptcy Code governs dismissal of a chapter 7 case, whereby the court "may dismiss a case under this chapter only after notice and a hearing and only for cause." 11 U.S.C. § 707(a); In re Kaur, 510 B.R. 281, 285 (Bankr. E.D. Cal. 2014). Regarding cause, a voluntary chapter 7 debtor is entitled to dismissal so long as such dismissal will cause no legal prejudice to interested parties. Kaur, 510 B.R. at 286 (citations omitted).

The court finds that dismissing Debtor's voluntary chapter 7 case will cause no legal prejudice to interested parties because Debtor would not be eligible for discharge under chapter 7. Debtor's case was filed on January 21, 2022. Debtor previously filed a bankruptcy petition under chapter 7 on March 10, 2014, and Debtor's chapter 7 discharge was granted June 19, 2014. The court finds that cause exists to dismiss this case and dismissal will cause no legal prejudice to interested parties.

Accordingly, this motion is GRANTED.

10:30 AM

1. [20-10010](#)-A-11     **IN RE: EDUARDO/AMALIA GARCIA**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
1-2-2020    [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. [20-10010](#)-A-11     **IN RE: EDUARDO/AMALIA GARCIA**  
[DMG-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-10-2022    [[906](#)]

STEPHANIE HUDSON/MV  
LEONARD WELSH/ATTY. FOR DBT.  
D. GARDNER/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

1. [19-13729](#)-A-7     **IN RE: MICHELLE PAUL**  
[19-1130](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
12-2-2019     [[1](#)]

LOS ANGELES FEDERAL CREDIT UNION V. PAUL  
ALANA ANAYA/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on April 4, 2022. Doc. #57.

2. [21-12348](#)-A-11     **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**  
[22-1004](#)     [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
1-11-2022     [[1](#)]

JUAREZ BROTHERS INVESTMENTS, LLC V. GRIMMWAY ENTERPRISES, LLC  
IGNACIO LAZO/ATTY. FOR PL.

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

DISPOSITION:     Continued to June 9, 2022, at 11:00 a.m.

NO ORDER REQUIRED.

On April 1, 2022, the court entered an order continuing the status conference to June 9, 2022, at 11:00 a.m. Doc. #19. The parties shall comply with the various requirements set forth in the Order to Confer on Initial Disclosures and Setting Deadlines (Doc. #5) using the June 9, 2022 status conference date.

3. [19-13783](#)-A-7     **IN RE: MARK/SUSAN CHAGOYA**  
[19-1129](#)

PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT  
7-6-2020    [\[40\]](#)

BROWN V. CHAGOYA ET AL  
JEFF BEAN/ATTY. FOR PL.  
VACATED, ORDER DTD 3/24/22

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

DISPOSITION:     Continued for status conference on May 5, 2022 at 11:00 a.m.

NO ORDER REQUIRED.

On March 24, 2022, the court issued an order vacating the pre-trial deadlines and the pre-trial conference set for April 7, 2022. Doc. #96. This matter is now scheduled for a status conference on May 5, 2022 at 11:00 a.m.

The parties shall file and serve joint or unilateral status report(s) not later than April 28, 2022.