

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, April 7, 2022
Place: Department B – Courtroom #13
Fresno, California

The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).

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.

9:30 AM

1. [22-10005](#)-B-13 **IN RE: PATRICIA TESSENDORE**
[MHM-3](#)

MOTION TO DISMISS CASE
3-23-2022 [\[27\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally denied.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and for failure to appear and testify at the continued § 341(a) meeting of creditors held on March 22, 2022. Doc. #27.

Though not required, Patricia Marie Tessendore ("Debtor") filed an *ex parte* request for an order shortening time and a response. Docs. ##34-35. The court notes that neither the request for an order shortening time nor the response were filed with certificates of service. It does not appear that either of these documents were served on any parties in interest.

This motion was filed and served on 14 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. The court intends to CONDITIONALLY DENY the motion.

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).

The record shows that Debtor attended the original meeting held February 22, 2022, but neither Debtor nor Debtor's counsel appeared at the continued meeting of creditors held March 22, 2022. Doc. #29. There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for failure to attend the continued meeting of creditors.

Trustee has reviewed the schedules and determined that there is a liquidation value of \$44,993.61 if this case were converted to chapter 7. Debtor has opted to use the exemption scheme outlined in Cal. Code Civ. Proc. §§ 704.010-704.995, but there still exists non-exempt equity in real property. Conversion, rather than dismissal, may better serve the interests of creditors and the estate.

Debtor shall attend the continued meeting of creditors scheduled for April 26, 2022 at 9:00 a.m. If Debtor fails to do so, Trustee may file a declaration with a proposed order to CONVERT TO CHAPTER 7 without a further hearing.

2. [22-10005](#)-B-13 **IN RE: PATRICIA TESSENDORE**
[MHM-4](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
3-24-2022 [[31](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to May 25, 2022 at 9:30 a.m.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of Patricia Marie Tessendore's ("Debtor") chapter 13 plan pursuant to 11 U.S.C. § 1325(a)(1) and (a)(6) because the plan fails to comply with applicable provisions of the Bankruptcy Code and the Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #31.

The court is inclined to CONTINUE the objection to May 25, 2022 at 9:30 a.m.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Written opposition was not required and may be presented at the hearing.

First, Trustee objects on all grounds, including but not limited to feasibility. Doc. #31. Trustee cannot narrow down the issues because Trustee has not been able to conduct a meeting of creditors. Debtor failed to appear at the 341 meeting that was set for March 22, 2022. The plan's success relies on Debtor selling her residence, but Trustee has not had the opportunity to question Debtor regarding her efforts to list real property for sale. The continued 341 meeting is scheduled for April 26, 2022. Trustee may have further objections to the plan

based on Debtor's testimony and will supplement this objection when Trustee becomes aware of further issues regarding confirmation as required by 11 U.S.C. § 1302(b) (2) (B).

Second, Debtor will not be able to make all payments due under the plan and comply with the plan as required by § 1325(a)(6). Debtor has failed to make any payments due under the plan so far. The plan proposes a seven-month term, with six payments of \$1,906.48 in the first six months, and a large lump sum payment of \$158,369.78 in the seventh month.

Since the § 341(a) meeting of creditors has not concluded, this objection will be CONTINUED to May 25, 2022 at 9:30 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtor shall file and serve a written response not later than May 11, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtors' position. Trustee shall file and serve a reply, if any, by May 18, 2022.

If 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 May 18, 2022. If Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated without a further hearing.

3. [17-10236](#)-B-13 **IN RE: PAUL/KATHLEEN LANGSTON**
[FW-13](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
3-4-2022 [[229](#)]

PETER FEAR/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.

Gabriel J. Waddell of Fear Waddell, P.C. ("Applicant"), attorney for Paul Dayton Langston and Kathleen Louise Langston ("Debtors"), seeks final compensation in the sum of \$37,566.79 under 11 U.S.C. § 330. Doc. #229. This amount consists of \$36,844.50 in fees as reasonable compensation and \$722.29 in reimbursement of actual, necessary expenses for services rendered from July 1, 2018 through the close of

the case. Applicant also requests approval of \$39,863.50 in fees and \$1,426.09 in costs, totaling \$41,289.59, which were previously awarded as interim compensation under § 331 on August 23, 2018. See FW-7.

Debtors signed a statement on March 3, 2022 indicating that they have read the fee application and approve the same. Doc. #231, *Ex. F*. Further, Debtors acknowledge and understand that the fees reserved in the plan are insufficient to cover the attorney fees. *Id.* Instead of raising the plan payments to cover those additional fees, Debtors agreed that any fees approved by the court but not paid through the plan will be non-dischargeable in this bankruptcy. *Id.* Debtors and Applicant met on March 3, 2022 to discuss what fees are anticipated to be paid through the plan and the fees that are anticipated to be paid following discharge. *Id.*; *cf.* Doc. #232.

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

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

The Fifth Modified Chapter 13 Plan Dated August 30, 2018 ("Plan") is the operative plan in this case. Docs. #163; #179. Section 3.05 of the Plan provides that Applicant was paid \$2,000.00 prior to filing the case and, subject to court approval, additional fees of \$25,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #163, § 3.05. The *Disclosure of Compensation of Attorney for Debtor(s)*, Form B2030, reaffirms that Applicant was paid \$2,000.00 by Debtors pre-petition, plus a \$310.00 filing fee. Doc. #1.

The application says that the plan provides for the following monthly amounts for administrative expenses:

Months 1-3: \$600.00
Months 4-8: \$750.00
Months 9-12: \$1,615.00
Month 13: \$4,187.61
Month 14: \$4,183.61
Months 15-17: \$4,187.61
Months 18-51: \$4,011.50
Months 52-60: \$4,871.55

Doc. #229, § 2(b)(4). However, this language is from Additional Provision 7.06, which appears to outline the total monthly plan payment for each month, rather than specifically the administrative expense dividend. Additional Provision 7.06 is not modified by the *Order Confirming Fifth Modified Plan* ("OCP"). Doc. #179.

Additional Provision 7.05 modifies Section 3.05 to adjust the attorney fees dividend as follows:

Months 1-3 - \$486.54 per month
Months 4-8 - \$625.00 per month
Months 9-10 - \$0 per month
Remaining months - \$500 per month

Doc. #163, § 7.05. So, the total attorney fee dividend provided by the Plan appears to be \$29,584.62, plus the \$2,000.00 retainer and \$310.00 filing fee paid pre-petition. Additional Provision 7.05 is not modified by the OCP, but it does strike Additional Provision 7.04 and replaces it with:

The following section of the plan is modified and or expanded by the provision set forth below: Administrative Expenses Section 3.05 & 3.06 and Distribution of Plan Payments Section 5.02:

- Pursuant to 11 U.S.C. Sec. 1322(a)(2), and In re Johnson, 344 B.R. 104 (BAP 9th Cir.2006), debtor and debtor's attorney agree that debtor's attorney fees and costs remaining unpaid upon completion of the case shall not be discharged and shall be paid directly by the debtor to counsel for the debtor before and/or after entry of the discharge, provided that all of the following conditions are satisfied: (1) debtor's attorney fees and costs are approved by the bankruptcy court pursuant to 11 U.S.C. Sec. 330, (2) based on the circumstances of the case, the court determines said fees and costs should be non-dischargeable, and (3) prior to submitting the final fee application in this case, counsel shall meet in person with the debtor to explain what fees are anticipated to be paid through the plan and what fees are anticipated to be paid following discharge. **Currently, the plan does not fund**

the attorney fees applied for and approved. Counsel for debtor has met with debtors in person and explained the possibility that the fees may not fund in the life of the plan and that counsel will request that the remaining fees be non-dischargeable.

Doc. #179, at 2, ¶¶ 3-21 (emphasis in original). So, any unpaid fees will not be discharged.

This is Applicant's second and final request for compensation. Doc. #229. Applicant was previously awarded \$41,289.59 in combined fees and expenses on August 23, 2018. Doc. #158.

The application says that the source of funds for payment will be from the Trustee to the extent available, with the remaining to be paid by the Debtors. Based on the \$29,684.62 attorney fees in the plan, plus the \$2,000.00 retainer and \$310.00 filing fee, it appears that the \$41,289.59 interim compensation award entirely exhausted the attorney fee dividend in the plan:

Total pre-petition payments	-	\$2,310.00
Attorney fee dividend in Plan	+	\$29,684.62
August 23, 2018 interim award	-	\$41,289.59
Non-dischargeable balance owed by Debtors	=	(\$9,294.97)
This fee application	-	\$37,844.50
Non-dischargeable balance if approved	=	(\$47,139.47)

Thus, at the conclusion of the plan it seems that Debtors will owe Applicant attorney fees in the entire amount of this application, plus approximately \$9,294.97 still owed from the first interim award. In accordance with *Wolff v. Johnson (In re Johnson)*, 344 B.R. 104 (B.A.P. 9th Cir. 2006), these amounts will be non-dischargeable.

Applicant's firm provided 111.40 hours of services, billed for 111.00 hours at the following rates, and requests **\$36,844.50** in fees:

Professional	Rate	Hours	Billed	Fees
Peter L. Fear (2018)	\$375	20.20	20.20	\$7,575.00
Peter L. Fear (2019)	\$390	6.10	6.10	\$2,379.00
Peter L. Fear (2020)	\$400	10.50	10.50	\$4,200.00
Peter L. Fear (2021)	\$410	6.40	6.40	\$2,624.00
Peter L. Fear (2022)	\$425	0.50	0.50	\$212.50
Gabriel J. Waddell (2018)	\$295	8.40	8.40	\$2,478.00
Gabriel J. Waddell (2019)	\$310	1.70	1.70	\$527.00
Gabriel J. Waddell (2020)	\$320	32.80	32.80	\$10,496.00
Gabriel J. Waddell (2021)	\$330	6.70	6.70	\$2,211.00
Gabriel J. Waddell (2022)	\$345	6.00	6.00	\$2,070.00
Gabriel J. Waddell (2022) ¹	\$345	2.50	2.50	\$862.50
Katie Waddell (2018)	\$195	1.60	1.20	\$234.00
Peter A. Sauer (2018)	\$210	0.10	0.10	\$21.00
Kayla Schlaak (2021)	\$110	2.20	2.20	\$242.00
Kayla Schlaak (2022)	\$125	5.70	5.70	\$712.50
Total Hours, Billables, & Fees		111.40	111.00	\$36,844.50

Doc. #231, Exs. B, C, D. Applicant also incurred **\$722.29** in expenses as follows:

Copying	\$462.75
Court fees	+ \$22.50
Postage	+ \$237.04
Total Expenses	= \$722.29

Id. The combined fees and expenses total **\$37,566.79**.

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

Applicant's services included, without limitation: (1) analyzing various claim issues and communicating with the debtors and a creditor; (2) preparation, filing, and prosecution of the Third (FW-5), Fourth (FW-6), Fifth (FW-8), and Sixth (FW-10) Modified Plans, and responding to objections to the same; (3) finalizing the first interim fee application (FW-7); (4) seeking and obtaining extensions of time to file annuity statements and accounting (FW-9; FW-11; FW-12); (5) preparing and filing this fee application (FW-13); (6) preparing and filing an objection to the priority status of a creditor (FW-14);

(7) estimated time for reviewing the notice of completed plan payments, preparation of the statements required by § 1328, review of the Trustee's final report, and drafting demand letters for Debtors' pink slip for the vehicle paid through the plan; and (8) prosecuting adversary proceeding no. 17-01044 against the Internal Revenue Service, which resulted in a yet-to-be-paid settlement of less than \$9,000.00 in favor of the Debtors. Doc. #231, *Exs. A, B, C, D*. The court finds the services and expenses reasonable, actual, and necessary. Debtors have consented to the fee application. *Id.*, *Ex. F*.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$36,844.50 in fees and \$722.29 in expenses on a final basis pursuant to § 330. Debtors will be authorized to pay Applicant \$37,566.79 for services rendered and expenses incurred from July 1, 2018 through the close of the case. Further, the court will approve on a final basis the \$41,289.59 previously awarded on August 23, 2018. The total fees and expenses for this chapter 13 case are \$78,856.38.

¹ This amount consists of estimated time to close out the case: (a) 0.5 hours for reviewing the notice of completed plan payments, case closing review, and memorandum regarding deadlines for case closing; (b) 0.5 hours drafting the § 1328 certificates; (c) 1.0 hours reviewing the Final Report and communicating with Trustee and Debtors; and (d) 0.5 hours drafting a demand letter for Debtors' vehicle pink slip. Doc. #231, *Ex. A*.

4. [19-12446](#)-B-13 **IN RE: CARLOS/BRANDI MOLINA**
[PBB-3](#)

MOTION TO MODIFY PLAN
3-7-2022 [\[53\]](#)

CARLOS MOLINA/MV
PETER BUNTING/ATTY. FOR DBT.
AMENDED NOTICE SET FOR 4/22/22 WITHOUT AN ORDER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied or continued to April 22, 2022 at
 9:30 a.m.

ORDER: The court will issue an order.

Carlos Antonio Molina and Brandi Hodges Molina ("Debtors") seek an order confirming the Second Modified Chapter 13 Plan (Doc. #58) filed March 7, 2022. Doc. #53. The plan proposes that Debtors shall pay \$2,050.00 per month for 32 months and \$660.00 per month for the remaining 28 months. Doc. #58, § 7. The plan contemplates a 0% dividend to be distributed to allowed, non-priority unsecured claims. *Id.*, ¶ 3.14.

However, on March 7, 2022, Debtors filed a *Notice of Corrected Hearing on Motion for Confirmation of Second Modified Chapter 13 Plan*, thereby adjusting the hearing date from April 7 to April 22, 2022. Doc. #61.

Continuances without a court order are not permitted under the Local Rules of Practice ("LBR"). However, LBR 9014-1(j) permits oral requests for a continuance if made at the scheduled hearing, or in advance by written application.

If Debtors' counsel appears at the hearing to orally request a continuance, then the motion will be CONTINUED to April 22, 2022 at 9:30 a.m. But if no written application for a continuance is received by the court before the hearing, and if counsel does not appear at the hearing, then the motion will be DENIED WITHOUT PREJUDICE for failure to comply with the local rules.

5. [16-14058](#)-B-13 **IN RE: SHANNON CASTONGUAY**
[TCS-3](#)

MOTION TO MODIFY PLAN
3-1-2022 [[76](#)]

SHANNON CASTONGUAY/MV
TIMOTHY SPRINGER/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 hearing. Trustee to approve the order.

Shannon Marie Castonguay ("Debtor") seeks an order confirming the Third Modified Chapter 13 Plan (Doc. #80) dated March 1, 2022. Doc. #76. The proposed plan retains the 64-month plan term from the Second Modified Plan dated July 27, 2020 (Doc. #62), in which it was extended beyond 60 months under 11 U.S.C. § 1329(d) and the Coronavirus Aid, Relief, and Economic Security ("CARES") Act before its sunset on March 27, 2021. Under the Third Plan, Debtor shall pay an aggregate of \$64,199.75 for months 1-63, and \$1,619.46 for month 64. Doc. #80. Allowed non-priority unsecured claims will receive a 13.3% dividend. *Id.*

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to plan confirmation because Debtor failed to use Form EDC 3-080 (Rev. 11/09/18), which is the standard form chapter 13 plan required by Fed. R. Bankr. P. 3015(c) and 3015.1, Gen. Order 18-03, and Local Rule of

Practice ("LBR") 3015-1(a). Doc. #86. Instead, the Third Plan uses an old form EDC 3-080 effective May 1, 2012. Doc. #80. However, since the Third Plan is in its final month, Trustee is amenable to adding language to the order confirming plan replacing the distribution provisions to be consistent with the current November 9, 2018 revision of EDC 3-080. Doc. #86.

Though not required, Debtor filed an *ex parte* motion to shorten time for hearing a response to Trustee's objection. Doc. #91. Debtor also timely replied to Trustee's objection, stating that she does not oppose the proposed changes to the order confirming plan. It appears that Trustee's objection can be resolved in the order confirming plan. The court notes that neither the request for an order shortening time nor the response were filed with certificates of service. It does not appear that either of these documents were served on any parties in interest.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2) and will proceed as scheduled. The failure of the creditors, the U.S. Trustee, or any other party in interest except Trustee 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 except Trustee are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

This matter will be called as scheduled to verify that Debtor has resolved Trustee's objection. The court is inclined to **OVERRULE** the objection and **GRANT** the motion. Any confirmation order shall be approved as to form by Trustee, include the docket control number of the motion, and shall reference the plan by the date it was filed.

6. [22-10060](#)-B-13 **IN RE: CURTIS/CHARTOTTE ALLEN**
[MHM-2](#)

MOTION TO DISMISS CASE
3-23-2022 [\[27\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally denied.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and for failure to appear and testify at the continued § 341(a) meeting of creditors held on March 22, 2022. Doc. #27.

Though not required, Curtis James Allen and Charlotte Yvette Allen ("Debtor") filed an *ex parte* request for an order shortening time and a response. Docs. ##31-32. The court notes that neither the request for an order shortening time nor the response were filed with certificates of service. It does not appear that either of these documents were served on any parties in interest.

This motion was filed and served on 14 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. The court intends to CONDITIONALLY DENY the motion.

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).

The record shows that Debtors attended the original meeting held February 22, 2022, but neither Debtors nor Debtors' counsel appeared at the continued meeting of creditors held March 22, 2022. Doc. #29. There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for failure to attend the continued meeting of creditors.

Trustee has reviewed the schedules and determined that there is a liquidation value of \$403.69 if this case were converted to chapter 7. Doc. #29. Debtor has opted to use the exemption scheme outlined in Cal. Code Civ. Proc. §§ 704.010-704.995, so there is a nominal amount of equity in Debtors' bank account. Dismissal, rather than conversion, serves the interests of creditors and the estate.

Debtors shall attend the continued meeting of creditors scheduled for April 26, 2022 at 9:00 a.m. If Debtors fail to do so, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

7. [22-10060](#)-B-13 **IN RE: CURTIS/CHARTOTTE ALLEN**
[TCS-1](#)

MOTION TO CONFIRM PLAN
2-25-2022 [[17](#)]

CURTIS ALLEN/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Continued to May 25, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

Curtis James Allen and Charlotte Yvette Allen ("Debtors") seeks an order confirming the First Modified Chapter 13 Plan (Doc. #22) dated February 25, 2022. Doc. #17. The plan proposes that Debtors shall pay 60 monthly plan payments of \$1,900.16 with a 7% dividend to allowed, non-priority unsecured claims. Doc. #22, § 3.14.

No party in interest timely filed written opposition. However, the § 341(a) meeting of creditors has not yet concluded. The continued meeting of creditors is set for April 26, 2022. Pursuant to 11 U.S.C. § 1324(b), this motion to confirm plan will be CONTINUED to May 25, 2022 at 9:30 a.m., subject to further continuance if the § 341 meeting is not concluded. Any party in interest may file written opposition not later than 14 days before the continued hearing date.

8. [18-11472](#)-B-13 **IN RE: EFRAIN MEJIA**
[DRJ-2](#)

MOTION FOR COMPENSATION FOR DAVID R JENKINS, DEBTORS
ATTORNEY(S)
3-7-2022 [[70](#)]

GABRIEL WADDELL/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.

David R. Jenkins ("Applicant"), attorney for Efrain Mejia ("Debtor"), seeks final compensation in the sum of \$2,310.00 under 11 U.S.C. § 330. Doc. #70. After application of pre-petition payments and courtesy discounts, this amount consists of \$1,843.15 (reduced from \$7,822.50) in fees as reasonable compensation and \$466.85 in actual,

necessary expenses rendered from April 6, 2018 through February 13, 2022. *Id.*

Debtor signed a statement of consent on March 3, 2022 indicating that Debtor received and read the fee application and approves the same. Doc. #72, *Ex. D.*

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

The original Chapter 13 Plan dated April 29, 2018 is the operative plan in this case. Docs. #16; #52. Section 3.05 indicates that Applicant was paid \$1,690.00 prior to filing the case and, subject to court approval, additional fees of \$2,310.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #16. The *Disclosure of Attorney Compensation of Attorney for Debtor(s)*, Form B2030, reaffirms that Applicant was paid \$1,690.00 pre-petition and \$2,310.00 will be paid through the plan. Doc. #15.

Applicant declares that he received pre-petition payments totaling \$2,000.00 from Debtor, consisting of a \$1,690.00 retainer and the \$310.00 filing fee. Other than these amounts, Applicant has not accepted or demanded from Debtor or any other person any payment for services or costs without first seeking a court order permitting payment of those fees and costs. Doc. #72, *Ex. A.*

This is Applicant's first and final request for compensation. Doc. #70. The source of funds for payment of the fees will be \$2,310.00 from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. *Id.*

Applicant provided 22.35 hours of legal services at a rate of \$350.00 per hour, totaling \$7,822.50 in fees. Doc. #72, *Exs. B, C.* Applicant also incurred \$466.85 in expenses as follows:

Title chain & lien report	\$31.85
Filing fee	+ \$310.00
Certificate of service (estimated)	+ \$125.00
Total Costs	= \$466.85

Id. The combined fees and expenses total \$8,289.35. However, Applicant provided a courtesy discount of \$3,979.35 and Debtor paid for a \$1,690.00 retainer and the \$310.00 filing fee pre-petition. *Id.*, *Ex. B.* Applicant's request for fees and expenses is therefore limited to **\$2,310.00**. Doc. #70.

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

Applicant's services included, without limitation: (1) advising Debtor about bankruptcy and non-bankruptcy alternatives; (2) gathering information and documents, reviewing Debtor's financial information, and preparing the petition, schedules, statements, and chapter 13 plan; (3) sending § 341 documents to Trustee and attending and completing the § 341 meeting of creditors; (4) responding to an objection to confirmation (AP-1) and confirming a chapter 13 plan; (5) preparing and filing this motion for compensation (DRJ-2). Doc. #72, *Exs. A, B, C.* The court finds the services and expenses reasonable, actual, and necessary. Debtor has consented to the fee application. *Id.*, *Ex. D.*

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$2,310.00 in fees and expenses on a final basis pursuant to § 330. The chapter 13 trustee is authorized, in his discretion, to pay Applicant \$2,310.00 in accordance with the chapter 13 plan for services rendered and expenses incurred from April 6, 2018 through February 13, 2022.

9. [20-11394](#)-B-13 **IN RE: CRUZ/CORINA ORTEGA**
[DRJ-2](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS
ATTORNEY(S)
3-7-2022 [\[27\]](#)

GABRIEL WADDELL/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.

David R. Jenkins ("Applicant"), attorney for Cruz Ortega and Corina Ortega ("Debtors"), seeks final compensation in the sum of \$4,000.00 under 11 U.S.C. § 330. Doc. #27. After application of pre-petition payments and courtesy discounts, this amount consists of \$3,387.33 in fees (reduced from \$8,295.00) as reasonable compensation and \$612.67 in actual, necessary expenses rendered from March 15, 2020 through January 13, 2022. *Id.*

Debtors signed a statement of consent on March 2, 2022 indicating that they received and read the fee application and approve the same.
Doc. #29, *Ex. D.*

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

The original Chapter 13 Plan dated April 10, 2020 is the operative plan in this case. Docs. #2; #21. Section 3.05 indicates that Applicant was paid \$2,190.00 prior to filing the case and, subject to court approval, additional fees of \$4,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #2. The

Disclosure of Attorney Compensation of Attorney for Debtor(s), Form B2030, reaffirms that Applicant was paid \$2,190.00 pre-petition and \$4,000.00 will be paid through the plan. Doc. #1.

Applicant declares that he received pre-petition payments totaling \$2,575.00 from Debtors, consisting of a \$2,190.00 retainer and \$385.00 for a credit report and filing fee. Other than these amounts, Applicant has not accepted or demanded from Debtors or any other person any payment for services or costs without first seeking a court order permitting payment of those fees and costs. Doc. #29, *Ex. A*.

This is Applicant's first and final request for compensation. Doc. #27. The source of funds for payment of the fees will be \$4,000.00 from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. *Id.*

Applicant provided 23.70 hours of legal services at a rate of \$350.00 per hour, totaling \$8,295.00 in fees. Doc. #29, *Exs. B, C*. Applicant also incurred \$612.67 in expenses as follows:

Title and lien report	\$30.17
Credit report	+ \$75.00
Filing fee	+ \$310.00
Court call	+ \$22.50
Certificate of service (estimated)	+ \$175.00
Total Costs	= \$612.67

Id. The combined fees and expenses total \$8,907.67. However, Applicant provided a courtesy discount of \$2,332.67 and Debtors paid for a \$2,190.00 retainer and \$385.00 for the filing fee and a credit report pre-petition. *Id.*, *Ex. B*. Applicant's request for fees and expenses is therefore limited to **\$4,000.00**. Doc. #27.

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

Applicant's services included, without limitation: (1) advising Debtor about bankruptcy and non-bankruptcy alternatives; (2) gathering information and documents, reviewing Debtors' financial information, and preparing the petition, schedules, statements, and chapter 13 plan; (3) sending § 341 meeting documents to Trustee and attending and completing the § 341 meeting of creditors; (4) confirming a chapter 13 plan; (5) preparing and filing this motion for compensation (DRJ-2). Doc. #29, *Exs. A, B, C*. The court finds the services and expenses

reasonable, actual, and necessary. Debtors have consented to the fee application. *Id.*, *Ex. D.*

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$4,000.00 in fees and expenses on a final basis pursuant to § 330. The chapter 13 trustee is authorized, in his discretion, to pay Applicant \$4,000.00 in accordance with the chapter 13 plan for services rendered and expenses incurred from March 15, 2020 through January 13, 2022.

10. [16-14058](#)-B-13 **IN RE: SHANNON CASTONGUAY**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
2-18-2022 [\[72\]](#)

MICHAEL MEYER/MV
NANCY KLEPAC/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

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

This matter was originally set for hearing on March 30, 2022. Doc. #88. Chapter 13 trustee Michael H. Meyer ("Trustee") asked the court to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay by the debtor that is prejudicial to creditors and material default by the debtor with respect to a term of a confirmed plan. Doc. #72.

Shannon Marie Castonguay ("Debtor") timely responded, acknowledged the delinquency, and claimed that the plan set for confirmation in matter #5 above would cure the delinquency and material default. Doc. #84; see also TCS-3. The court intends to grant that motion to modify plan. Accordingly, this motion to dismiss will be DENIED AS MOOT because Debtor has cured the delinquency by confirming a modified plan.

10:00 AM

1. [21-12342](#)-B-7 **IN RE: JEFF/TERESA MERRILL**
[SLL-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A.
3-3-2022 [\[24\]](#)

JEFF MERRILL/MV
STEPHEN LABIAK/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.

Jeff Merrill and Teresa Merrill ("Debtors") seek to avoid a judicial lien in favor of Capital One Bank (USA), N.A. ("Creditor") in the sum of \$4,812.14 and encumbering residential real property located at 5801 W. Perez Avenue, Visalia, CA 93291 ("Property").² Doc. #24.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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 debtor's 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). § 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), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against joint debtor Jeff Merrill in favor of Creditor in the sum of \$4,812.14 on May 30, 2019. Doc. #26, *Ex. C*. The abstract of judgment was issued on July 3, 2019 and recorded in Tulare County on August 12, 2019. *Id.* That lien attached to Debtors' interest in Property and appears to be the only non-consensual judgment lien encumbering Property. Docs. #1, *Sched. D*; #27.

As of the petition date, Property had an approximate value of \$508,000.00. *Id.*; Doc. #17, *Am. Sched. A/B*. Property is encumbered by a single \$266,196.00 deed of trust in favor of PHH Mortgage Service. Doc. #1, *Sched. D*. Debtors claimed a "homestead" exemption in Property pursuant to Cal. Code Civ. Proc. § 704.730 in the amount of \$300,000.00. Doc. #19, *Am. Sched. C*.

Strict application of the § 522(f)(2) formula is as follows:

Amount of Creditor's judicial lien	\$4,812.14
Total amount of unavoidable liens	+ \$266,196.00
Amount of Debtors' claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$571,008.14
Debtors' claimed value of interest absent liens	- \$508,000.00
Amount Creditor's lien impairs Debtor's exemption	= \$63,008.14

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). 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	\$508,000.00
Total amount of unavoidable liens	- \$266,196.00
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$58,196.00)
Creditor's original judicial lien	- \$4,812.14
Extent Debtors' exemption impaired	= (\$63,008.14)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

² Debtors complied with Fed. R. Bankr. P. 7004(h) by serving Richard Fairbank, Creditor's CEO and President, by certified mail at 1680 Capital One Drive, McLean, VA 22101 on March 3, 2022. Doc. #28.

2. [21-12248](#)-B-7 **IN RE: JUAN CEBALLOS**
[JES-1](#)

MOTION TO SELL
3-4-2022 [\[22\]](#)

JAMES SALVEN/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") requests an order authorizing the sale of the estate's interest in a 2016 Nissan Rogue SV ("Vehicle") to Juan Manuel Ceballos ("Debtor") for \$11,450.00, subject to higher and better bids at the hearing. Doc. #22.

No party in interest timely filed written opposition. This motion will be GRANTED and proceed for higher and better bids only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(2). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to the Debtor. Vehicle has 85,000 miles, accident damage, and is listed in the schedules with a value of \$11,450.00. Doc. #1, Sched. A/B. Vehicle is encumbered by a \$6,838.00 lien in favor of Kinecta Federal Credit Union ("Kinecta"). *Id.*, Sched. D. It appears that the Kinecta lien will be paid through the sale proceeds based on the claimed net to the estate. Debtor also claimed a \$3,325.00 exemption in Vehicle under Cal. Code Civ. Proc. § 704.010. *Id.*, Sched. C. Debtor is applying the exemption credit to the final sale price.

Trustee declares that Debtor offered to purchase the estate's interest in Vehicle for \$11,450.00, which he accepted subject to court approval and higher and better bids. Doc. #24. Trustee has not agreed to pay a commission to any party in connection with the sale and it is subject to any liens and encumbrances, known or unknown, other than the Kinecta lien that will be paid from the sale proceeds. The sale price was determined by estimating the fair market value of the Vehicle. After application of Debtor's exemption credit and payment of the Kinecta lien, the sale of Vehicle will net approximately \$1,287.00 to the estate as follows if there are no overbidders:

Sale price	\$11,450.00
Kinecta lien	- \$6,838.00
Debtor's exemption credit	- \$3,325.00
Net to the estate	= \$1,287.00

Id. Trustee is in receipt of the funds and is awaiting court approval. *Id.* Trustee believes the proposed sale is in the best interests of creditors and the estate. *Id.*

The sale appears to be in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid exercise of Trustee's business judgment, and proposed in good faith. The sale subject to higher and better bids will maximize estate recovery and yield the best possible sale price. There is no opposition to the sale.

Accordingly, this motion will be GRANTED. The hearing will proceed for higher and better bids only. Trustee is authorized to sell Vehicles to the highest bidder as determined at the hearing.

Any party wishing to overbid must appear at the hearing and acknowledge that the sale is subject to all liens and encumbrances, known or unknown, except the Kinecta lien that will be paid through the sale proceeds, and no warranties or representations are included with the sale; it is being sold "as-is, where-is."

3. [21-12859](#)-B-7 **IN RE: WILLIAM/MARIBEL SOTO**
[PSC-1](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES LLC
3-6-2022 [\[16\]](#)

WILLIAM SOTO/MV
PATRICIA CARRILLO/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

William H. Soto and Maribel Rivas Soto ("Debtors") seek to avoid a judicial lien in favor of Portfolio Recovery Associates, LLC ("Creditor") in the sum of \$3,493.95 and encumbering residential real property located at 1755 Fairmont, Clovis, CA 93611.³ Doc. #16.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, for motions filed on 28 days' notice, LBR 9014-1(f)(1)(B) requires the movant to notify respondents that any opposition to the motion must be in writing and filed with the court at least 14 days preceding the date of the hearing.

Here, the motion was filed and served on March 6, 2022. Doc. #21. March 6, 2022 is 32 days before the April 7, 2022 hearing date.

Therefore, this motion was set for hearing on 28 days' notice under LBR 9014-1(f)(1). However, the notice stated:

If you wish to oppose this motion, you are not required to file a written opposition prior to the hearing date. Opposition, if any, shall be presented at the hearing on the motion[.]

Doc. #17, at 2, ¶¶ 7-9. This is incorrect. Because the hearing was set on 28 days' notice, LBR 9014-1(f)(1) is applicable and the notice should have stated that written opposition was required, must be filed 14 days before the hearing, and failure to file written opposition may be deemed a waiver of any opposition to the granting of the motion. Instead, the respondents were told not to file and serve written opposition even though it was necessary. Therefore, the notice was materially deficient. If the movant gives 28 days or more of notice of the hearing, there is no option to simply pretend that the motion was set for hearing on less than 28 days of notice to dispense with the court's requirement that any opposition must be in writing and filed with the court.

Second, LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Although the exhibit was filed as a separate exhibit document, it did not include an index, and the exhibit pages were not consecutively numbered. Doc. #20.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

³ Debtors complied with Fed. R. Bankr. P. 7004(b)(3) by serving Corporation Service Company dba CSC Lawyers Incorporating Service, Creditor's registered agent for service of process, by first class mail at its registered agent for service of process address on March 6, 2022. Doc. #21.

4. [21-12660](#)-B-7 **IN RE: JESSE ACUNIA**
[JRL-1](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
3-8-2022 [\[17\]](#)

JESSE ACUNIA/MV
JERRY LOWE/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.

Jesse James Acunia ("Debtor") seeks to avoid a judicial lien in favor of Wells Fargo Bank, N.A. ("Creditor") in the sum of \$10,196.13 and encumbering residential real property located at 1730 S. Channing Avenue, Fresno, CA 93706 ("Property").⁴

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

First, the court notes that the notice of hearing (Doc. #18) does not procedurally comply with the local rules. LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition.

Second, LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Although the

exhibits were filed as a separate exhibit document and included an index, the exhibit pages were not consecutively numbered. Doc. #20.

Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

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 debtor's 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). § 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), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$10,196.13 on April 7, 2021. Doc. #20, *Ex. A*. The abstract of judgment was issued on July 8, 2021 and recorded in Fresno County on July 26, 2021. *Id.* That lien attached to Debtors' interest in Property and appears to be the only non-consensual judgment lien encumbering Property. Docs. #1, *Sched. D*; #19.

As of the petition date, Property had an approximate value of \$200,000.00. *Id.*; Doc. #1, *Sched. A/B*. Property is encumbered by a single deed of trust in favor of Flagstar Bank, which is listed in the schedules as "Central Loan Admin & R," in the amount of \$101,668.00. *Id.*, *Sched. D*; Doc. #19. Debtor claimed a "homestead" exemption in Property pursuant to Cal. Code Civ. Proc. § 704.730 in the amount of \$300,000.00. Doc. #1, *Sched. C*.

Strict application of the § 522(f)(2) formula is as follows:

Amount of Creditor's judicial lien	\$10,196.13
Total amount of unavoidable liens	+ \$101,668.00
Amount of Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$411,864.13
Debtor's claimed value of interest absent liens	- \$200,000.00
Amount Creditor's lien impairs Debtor's exemption	= \$211,864.13

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). 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	\$200,000.00
Total amount of unavoidable liens	- \$101,668.00
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$201,668.00)
Creditor's original judicial lien	- \$10,196.13
Extent Debtor's exemption impaired	= (\$211,864.13)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

⁴ Debtors complied with Fed. R. Bankr. P. 7004(h) by serving Charles W. Scharf, Creditor's CEO, by certified mail at 420 Montgomery Street, San Francisco, CA 94104 on March 8, 2022. Doc. #21

5. [21-12263](#)-B-7 **IN RE: ANTONIO DIAZ**

MOTION TO WAIVE REOPEN FILING FEE
3-14-2022 [[25](#)]

ANTONIO DIAZ/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

NO RULING.

Antonio Diaz ("Debtor") filed this application for waiver of the reopen filing fee. Doc. #25.

The court set this application for hearing because the application is inconsistent with the schedules filed with the petition on September 24, 2021. Doc. #27.

According to the petition, Debtor receives \$2,991.39 in monthly income (\$35,896.68 annually) from Debtor's job at Peters Fruit Farms, Inc. Doc. #1, *Sched. I*. In *Schedule J*, Debtor's expenses total \$2,991.46, which leaves him a monthly deficit of -\$0.07. *Id.*, *Sched. J*.

Meanwhile, Debtor lists no income in the application to waive the reopen fee and Sections 2, 5, 10, 11, 13, 15, and 16 were not completed. Doc. #25. Further, Debtor claims his monthly expenses average \$1,400, which contradicts the \$2,991.46 in expenses claimed in

Schedule J. Neither the schedules nor the fee waiver application claims any dependents.

Under 28 U.S.C. § 1930(f), the court may waive the filing fee for filing a case under chapter 7 if such individual's income is less than 150% of the income poverty line for a family of applicable size and such individual is unable to pay the fee in installments. So, to qualify for a filing fee waiver, Debtor must show an income below 150% of the federal poverty guidelines based on his family size as published by the United States Department of Health and Human Services ("HHS"). Those guidelines provide the following income threshold:

Family Size	Monthly Income	Annual Income
1	\$1,698.75	\$20,385.00

See HHS Poverty Guidelines for 2022.⁵ Based on Debtor's scheduled monthly income of \$2,991.39, he does not appear to qualify for a filing fee waiver.

This matter will be called as scheduled to inquire about the discrepancies between the fee waiver application and the schedules.

⁵ See <https://www.uscourts.gov/sites/default/files/poverty-guidelines.pdf> (visited Mar. 31, 2021). The court may take judicial notice *sua sponte* of information published on government websites. Fed. R. Evid. 201(c)(1); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

10:45 AM

1. [22-10061](#)-B-11 **IN RE: CALIFORNIA ROOFS AND SOLAR, INC.**
[MJB-2](#)

MOTION TO EMPLOY MICHAEL JAY BERGER AS ATTORNEY(S)
3-10-2022 [\[25\]](#)

CALIFORNIA ROOFS AND SOLAR,
INC./MV
MICHAEL BERGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to April 28, 2022 at 9:30 a.m.

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

Subchapter V debtor-in-possession California Roofs and Solar, Inc. fka CMSED Enterprises ("DIP") asks the court to approve DIP's retention of Michael Jay Berger ("Counsel") of the Law Offices of Michael Jay Berger ("Firm") as general bankruptcy counsel for the chapter 11 estate effective January 17, 2022. Doc. #25.

The Application is supported by the declarations of Applicant and Carlos Colima, DIP's CEO. It appears that the application and all related pleadings were properly served on chapter 11 subchapter V trustee Lisa A. Holder ("Trustee"), all creditors, and the U.S. Trustee were served as required by Fed. R. Bankr. P. ("Rule") 2014(a). Doc. #30.

No party in interest timely filed written opposition. However, the application does not contain the verified statement with mandatory language required under Local Rule of Practice ("LBR") 2014-1(a). Every Application for Employment of Professional Persons filed under Rule 2014(a) requires, after disclosure of actual connections, to close with the following statement: "Except as set forth above, I have no connection with the debtor, creditors, or any party in interest, their respective attorneys, accountants, or the U.S. Trustee, or any employee of the U.S. Trustee." Applications omitting this verified statement may be denied without prejudice.

Since this is Applicant's second attempt prosecuting this motion, this matter will be called as scheduled. The court is inclined to CONTINUE the motion to April 28, 2022 at 9:30 a.m., with a verified statement due no later than seven days before the hearing. If the LBR 2014-1(a) verified statement is properly filed before the hearing, the court will predispose the matter and no hearing will be necessary.

This motion was set for hearing on 28 days' notice as required by LBR 9014-1(f)(1). The failure of the creditors, the DIP, the subchapter V Trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

11 U.S.C. § 1184 gives the subchapter V debtor all rights, except the right to compensation under § 330, and powers of a trustee serving under this chapter, including operating the business of the debtor, and requires it to perform all functions and duties of a trustee, except those specified in § 1106(a)(2), (3), or (4).

Under 11 U.S.C. § 327, a professional person such as an attorney can be employed by the estate with the court's approval if the proposed professional does not hold or represent an interest adverse to the estate and is "disinterested."

On January 5, 2022, DIP retained the Firm to file a chapter 11 bankruptcy. Docs. ##28-29, *Ex. 1*. DIP desired to retain the Firm because it has extensive experience representing creditors and debtors in chapters 7, 11, and 13 bankruptcy proceedings. *Id.*; Docs. #27; #29, *Exs. 2-3*.

Carlos Colima, DIP's CEO, declares that Firm and DIP agreed upon a \$20,000.00 retainer. Doc. #28. On January 5, 2022, DIP paid the initial \$10,000 toward the retainer. The remaining \$10,000.00 balance, plus the \$1,738.00 chapter 11 filing fee, were paid on January 14, 2022. *Id.*

DIP filed chapter 11 subchapter V bankruptcy on January 17, 2022. Doc. #1. Applicant incurred \$3,077.50 in fees for the work done on behalf of DIP prior to filing the bankruptcy. Docs. ##27-28.

Applicant declares that he is not employed by or connected with any of DIP's creditors, or with any other party in interest, or their respective attorneys. Doc. #27. Colima declares the same with respect to the Firm. Doc. #28. The evidence establishes neither the Firm nor Applicant hold or represent interests adverse to the estate and are disinterested. The court finds that Applicant and the Firm do not hold or represent interests adverse to the estate and are therefore disinterested persons within the meaning of 11 U.S.C. § 101(14). However, no verified statement pursuant to LBR 2014-1(a) accompanied the application. The statement under LBR 2014-1(a) also requires information about whether there is any connection to accountants employed by parties in interest, the U.S. trustee, or any employee of the U.S. trustee.

Additionally, Applicant requests the employment to be effective as of January 17, 2022: the petition date. LBR 2014-1(a) provides that an application for an order approval employment pursuant to Rule 2014(a) shall be presumed to relate back to the later of 30 days before the filing of the application or the order for relief. The order for relief coincides with the petition date, so January 17, 2022 will be the effective date under LBR 2014-1(b) (1).

No party in interest timely filed written opposition to the motion. However, Applicant still must include the verified statement as required by LBR 2014-1(a).

This matter will be called as scheduled. The court is inclined to CONTINUE the motion to April 28, 2022 at 9:30 a.m., with a verified statement due not later than seven days before the hearing. If the LBR 2014-1(a) verified statement is properly filed before the hearing, the court will predispose the matter and no hearing will be necessary.

2. [22-10274](#)-B-12 **IN RE: BRYAN SCHOONOVER**
[RWR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-24-2022 [\[17\]](#)

LUCKY GOLD/MV
RUSSELL REYNOLDS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Lucky Gold ("Movant") seeks relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1) as to Bryan Scott Schoonover ("Debtor") and chapter 12 trustee Michael H. Meyer ("Trustee") to permit a post-trial *Statement of Decision* and *Judgment* to be entered in a state court action filed in Fresno County Superior Court. Doc. #17. The lawsuit is entitled *Lucky Lee Gold v. Monalisa Berbey, et al.*, Case No. 16CECG0220 ("State Court Action") and was commenced by Movant against Debtor and codefendants approximately 6 years before this case was filed.

Movant desires to liquidate his claim via entry of the *Statement of Decision* and *Judgment* and to seek recovery from non-bankrupt codefendants. Movant further requests waiver of the 14-day stay provided for in Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3).

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and 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.

Debtor filed chapter 12 bankruptcy on February 25, 2022. Doc. #1. Movant is a creditor of Debtor. Doc. #19. Prior to the bankruptcy, Movant commenced the State Court Action alleging causes of action against Debtor and other non-debtor codefendants for avoidance of fraudulent transfers in violation of the California Uniform Voidable Transactions Act, Cal. Civ. Code §§ 3439.01, et seq. *Id.*

In November 2021, the state court held a bench trial. On January 21, 2022, the state court ruled in Movant's favor against Debtor and the codefendants and awarded damages of \$778,599.67 for the fraudulent transfer cause of action. *Id.*; see also Doc. #21, *Ex. 1*. The state court subsequently issued a *Proposed Statement of Decision* finding that "the defendants conspired to and did transfer title to [real property in Selma, California] and cash to Schoonover either directly or on his behalf with the intent to hinder, delay or defraud Mr. Gold in his attempts to collect the amounts owed by Ms. Berbey [the Debtor's codefendant spouse, now deceased]." *Id.*, *Ex. 2.*, at 11, ¶¶ 14-16. Objections to the *Proposed Statement of Decision* were due not later than March 21, 2022. *Id.*, at 12. That same day, Debtor filed chapter 12 bankruptcy. Movant now seeks stay relief. Docs. #17; #20.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

The court finds that cause exists to modify the automatic stay to permit Movant to take necessary actions to finalize the State Court Action and liquidate his claim against non-debtor codefendants.

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). The relevant factors in this case include:

1. Whether the relief will result in a partial or complete resolution of the issues;

2. The lack of any connection with or interference with the bankruptcy case;
3. Whether the foreign proceeding involves the debtor as a fiduciary;
4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee, and other interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
12. The impact of the stay on the parties and the "balance of hurt."

Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.), 311 B.R. 551 (Bankr. C.D. Cal. 2004), citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984); see also *Kronemyer*, 405 B.R. at 921.

Here, the *Curtis* factors weigh in favor of stay relief as follows:

1. Partial or complete resolution of the issues: Granting the motion will allow the State Court Action to be concluded by way of entry of a *Statement of Decision and Judgment*, which will resolve the issues between the parties. Trial has already been completed and a ruling issued. This factor weighs in favor of modification of the stay.
2. Lack of connection with or interference with the bankruptcy case: Allowing Movant to liquidate his claim in the State Court Action by seeking relief from non-debtor codefendants only will not interfere with this bankruptcy proceeding because Movant will not be seeking recovery from the bankruptcy estate. This factor weighs in favor of modification.
3. Debtor as a fiduciary: Debtor does not appear to be involved in the State Court Action as a fiduciary, so this factor is inapplicable.
4. Specialized tribunal: Fresno County Superior Court has expertise in state court causes of action. Further, a bench trial and decision have

already been adjudicated. This factor heavily weighs in favor of modification.

5. Insurance carrier's assumption of responsibility in defending litigation: The claims at issue in the State Court Action are not subject to insurance coverage, so this factor is inapplicable.

6. Whether the action involves third parties and debtor functions only as a bailee for goods or proceeds: The State Court Action involves third-party defendants who are not before this Bankruptcy Court, specifically the Estate of Monalisa Berbey, Wonderful Cherries, LLC, and 405 E. Broadway, LLC. The automatic stay is preventing judgment from being entered against the third-party defendants and Debtor does not appear to be functioning as a bailee or conduit for goods or proceeds. This factor weighs in favor of modification.

7. Prejudice to other creditors and interested parties: The State Court Action would not prejudice creditors or parties in interest because Movant is seeking only to liquidate claims from non-debtor codefendants and seeks recovery of assets that are not property of the bankruptcy estate.

8. Equitable subordination: Equitable subordination is inapplicable here.

9. Whether the outcome in the foreign proceeding would result in an avoidable judicial lien: Movant says that entry of judgment would not result in a judicial lien avoidable under 11 U.S.C. § 522(f). Doc. #20.

10. Interests of judicial economy and expeditious and economical determination of litigation for the parties: Judicial economy would be served because the State Court Action has already been completed and the only outstanding issue for final resolution is entry of the *Statement of Decision* following ruling on any objections, and entry of the *Judgment*. This factor weighs heavily in favor of modification.

11. Progressed to the point of trial: As noted above, trial has been completed but for entry of the *Statement of Decision* and *Judgment*. This factor weighs heavily in favor of modification.

12. Impact of the stay and the "balance of hurt": The "balance of hurt" weighs in favor of modification because Movant will be seeking recovery from non-debtor codefendants only and will not affect property of the estate or the interests of creditors. Further, Movant will be prejudiced if modification is not granted because he will be unable to assert his rights against the codefendants.

The *Curtis* factors weigh in favor of modifying the automatic stay to permit the state court to finalize the State Court Action.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion pursuant to 11 U.S.C. § 361(d)(1). The automatic stay will be modified to permit the Fresno County Superior Court to resolve the State Court Action. Movant will be permitted to seek relief against the non-debtor codefendants only.

If granted, the 14-day stay of Rule 4001(a)(3) will be ordered waived because the State Court Action has been pending for 6 years, has already been resolved by trial, and is only awaiting entry of the *Statement of Decision* and *Judgment*.

11:30 AM

1. [17-10236](#)-B-13 **IN RE: PAUL/KATHLEEN LANGSTON**
[21-1043](#) [FW-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
3-4-2022 [\[19\]](#)

LANGSTON ET AL V. CALIFORNIA
DEPARTMENT OF DEVELOPMENTAL
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION: Continued to July 20, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The parties filed a *Notice of Settlement and Stipulation to Continue Hearing on Motion for Entry of Default Judgment Against Defendant California Department of Developmental Services and Status Conference* on March 5, 2022. Doc. #32. The parties have reached an agreement to settle the adversary proceeding and need additional time to reduce the settlement to a written agreement. After the settlement is consummated, the parties will dismiss the adversary proceeding.

Given the settlement, the parties wish to continue Plaintiffs' prove-up hearing approximately 90 days from April 7, 2022. *Id.* The parties also request to continue the status conference in matter #3 below (CAE-1) to the same date and time as the continued prove-up hearing.

Accordingly, this motion will be CONTINUED to July 20, 2022 at 11:00 a.m. Any opposition to Plaintiffs' motion is due not later than two weeks prior to the continued hearing date.

2. [13-11337](#)-B-13 **IN RE: GREGORY/KARAN CARVER**
[22-1001](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-6-2022 [\[1\]](#)

CARVER ET AL V. SETERUS INC.
ET AL
NANCY KLEPAC/ATTY. FOR PL.

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

DISPOSITION: Continued to April 22, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

Debtors Gregory Thomas Carver and Karan Ann Carver ("Plaintiffs") timely served the *Reissued Summons and Notice of Status Conference in an Adversary Proceeding* (Doc. #8) on Nationstar Mortgage LLC d/b/a Mr. Cooper LLC, and Gregory Funding Inc. ("Defendants") on March 9, 2022. Doc. #10. The summons was reissued on March 8, 2022, so the deadline for Defendants to file and serve an answer is April 7, 2022, the day of this hearing.

Since an answer may not be on file until after the hearing, this status conference will be CONTINUED to April 22, 2022 at 11:00 a.m. to be heard after the deadline for Defendants to file an answer in accordance with Fed. R. Bankr. P. 7012.

3. [17-10236](#)-B-13 **IN RE: PAUL/KATHLEEN LANGSTON**
[21-1043](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-23-2021 [\[1\]](#)

LANGSTON ET AL V. CALIFORNIA
DEPARTMENT OF DEVELOPMENTAL
GABRIEL WADDELL/ATTY. FOR PL.

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

DISPOSITION: Continued to July 20, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The parties filed a *Notice of Settlement and Stipulation to Continue Hearing on Motion for Entry of Default Judgment Against Defendant California Department of Developmental Services and Status Conference* on March 5, 2022. Doc. #32. The parties have reached an agreement to settle the adversary proceeding and need additional time to reduce the

settlement to a written agreement. After the settlement is consummated, the parties will dismiss the adversary proceeding.

Given the settlement, the parties wish to continue Plaintiffs' prove-up hearing in matter #1 above (FW-1) approximately 90 days from April 7, 2022. *Id.* The parties also request to continue this status conference to the same date and time as the continued prove-up hearing.

Accordingly, this status conference will be CONTINUED to July 20, 2022 at 11:00 a.m. If the settlement has not been finalized and the adversary proceeding is not dismissed by the continued hearing date, Plaintiffs shall file a joint or unilateral status report not later than seven days before the continued status conference date.