



UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, April 10, 2025  
Department A – Courtroom #11  
Fresno, California

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Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

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

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

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

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

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

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

## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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. [25-10024](#)-A-13     **IN RE: CRAIG/JOSE SOLIZ-STROHL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
3-12-2025    [\[29\]](#)

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

DISPOSITION:     Dropped as moot.

ORDER:             The court will issue an order.

The court has granted the trustee's motion to dismiss [LGT-1], calendar matter #2 below, therefore this order to show cause will be DROPPED AS MOOT.

2. [25-10024](#)-A-13     **IN RE: CRAIG/JOSE SOLIZ-STROHL**  
[LGT-1](#)

MOTION TO DISMISS CASE  
3-7-2025    [\[25\]](#)

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 at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtors 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 debtors 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 this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtors that is prejudicial to creditors. Doc. #25. Specifically, Trustee asks the court to dismiss this case for the debtors' failure to: (1) set a modified plan for hearing with notice to creditors; (2) file and set for hearing motions to value collateral for a 2011 Chevrolet Tahoe and a 2018 Ram 1500 Crew Cab; (3) provide Trustee with any requested documents; (4) file a complete plan (Section 3.14 of the amended plan filed on February 11, 2025 is blank); (5) file accurate/complete schedules; and (6) commence making payments due under the plan. Doc. #25. In addition, the debtors are ineligible to be debtors

because the debtors failed to receive their credit counseling prior filing for bankruptcy and have not requested a waiver of that requirement. The debtors did not oppose Trustee's motion.

Under 11 U.S.C. § 109(h), an individual may not be a debtor unless the debtor received credit counseling within the 180-day period ending on the petition date. 11 U.S.C. § 109(h)(1). Craig Aaron Soliz-Strohl and Jose Albert Rodriguez Soliz-Strohl (collectively, "Debtors") filed for relief under chapter 13 of the Bankruptcy Code on January 6, 2025. Doc. #1. On January 21, 2025, Certificates of Counseling were filed indicating that Debtors received credit counseling on January 16, 2025, offered by an approved provider pursuant to 11 U.S.C. § 111. Doc. #11. The certificates show that Debtors received their credit counseling after, not before, Debtors filed their bankruptcy petition. The Bankruptcy Code allows Debtors to request a waiver of the § 109(h)(1) requirement to receive credit counseling pre-petition based on exigent circumstances within 45 days of filing their bankruptcy petition. 11 U.S.C. § 109(h)(3). However, Debtors have not requested a waiver of the § 109(h)(1) requirements and, because Debtors did not receive credit counseling prior to filing their bankruptcy petition and have not received a waiver of that requirement in the time permitted by the Bankruptcy Code, Debtors may not be debtors pursuant to 11 U.S.C. § 109(h).

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 that is prejudicial to creditors because Debtors have failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). In addition, Debtors did not obtain pre-petition credit counseling as required by 11 U.S.C. § 109(h)(1) and did not request a waiver of the § 109(h)(1) requirement post-petition within the time period provided by 11 U.S.C. § 109(h)(3)(B). Cause also exists under 11 U.S.C. § 1307(c)(4) to dismiss this case as Debtors have failed to commence making payments due under the plan.

Because Debtors are not eligible to be debtors 11 U.S.C. § 109(h), dismissal rather than conversion is appropriate.

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

3. [19-13645](#)-A-13 **IN RE: GUSTAVO/BEATRIZ ROCHA**  
[SLL-5](#)

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS ATTORNEY(S)  
3-10-2025 [[92](#)]

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.

This motion was set for hearing on at least 28 days' notice prior to the hearing date 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.

Stephen L. Labiak ("Movant"), counsel for Gustavo Rocha and Beatriz Rocha (together, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation in the amount of \$3,260.00 and reimbursement for expenses in the amount of \$182.70 for services rendered from April 2, 2020 through February 24, 2025. Doc. #92. Debtors' confirmed plan provides, in addition to \$300.00 paid prior to filing the case, for \$10,700.00 in attorney's fees to be paid through the plan. Plan, Doc. ##61, 77. This is Movant's second interim application for allowance of fees and expenses. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 for fees and expenses in the combined amount of \$6,002.60. Order, Doc. #46. Debtors consent to the amount requested in Movant's application. Doc. #92; Decl. of Beatriz Rocha, Doc. #95.

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). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). 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 prosecuting Debtors' first modified plan; (2) preparing and prosecuting Debtors' second modified plan; (3) researching and advising Debtors about mortgage assistance and escrow analysis; (4) communicating with Debtors' creditors regarding claims; (5) preparing the fee application; and (6) general case administration. Exs. B, C & D, Doc. #97. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$3,260.00 and reimbursement for expenses in the amount of \$182.70 to be paid in a manner consistent with the terms of the confirmed plan.

MOTION TO DISMISS CASE  
2-28-2025    [\[167\]](#)

LILIAN TSANG/MV  
SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted in part; the case will be converted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to 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 asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(6) for failure of the debtors to make all payments due under the plan. Doc. #167. The debtors are delinquent in the amount of \$41,317.70. Id. Before this hearing, another payment in the amount of \$14,895.30 will also come due. The debtors did not oppose the trustee's 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". There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) and (c)(6) for failure of the debtors to make all payments due under the plan.

Based on the debtors' confirmed plan, there was a liquidation amount of \$191,603.55 as of August 4, 2021. Order, Doc. #47, as amended by Doc. #164. This amount is based primarily on non-exempt equity in the debtors' vehicles, business equipment, and goodwill of the business. If the debtors were to amend the exemptions, there would remain non-exempt equity that could be realized for the benefit of unsecured creditors should the case be converted to chapter 7. Because there appears to be sufficient non-exempt equity in the debtors' assets to be realized for the benefit of the estate if the debtors' bankruptcy case is converted to chapter 7 instead of being dismissed, the court finds that conversion, rather than dismissal, is in the best interests of creditors and the estate.

Accordingly, the motion will be GRANTED IN PART, and the case will be converted.

5. [25-10356](#)-A-13     **IN RE: MATTHEW/DANIELLE CARRICO**  
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G TSANG  
3-25-2025    [\[16\]](#)

LILIAN TSANG/MV  
RABIN POURNAZARIAN/ATTY. FOR DBT.  
WITHDRAWN 4/2/25

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection to confirmation of the plan on April 2, 2025.  
Doc. #19.

6. [25-10459](#)-A-13     **IN RE: DANIEL/MADALENA HENSLEY**  
[RSW-2](#)

MOTION TO SELL  
3-21-2025    [\[23\]](#)

MADALENA HENSLEY/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
OST 3/24/25, RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted if debtors provide an estimated closing  
statement.

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

On March 24, 2025, the court granted the movants' ex parte Motion for Order Shortening Time to hear the movants' motion to sell. Doc. #26. This motion was set for hearing on April 10, 2025 at 9:30 a.m. pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3). While not required, the chapter 13 trustee ("Trustee") filed written opposition on March 28, 2025. Doc. #27. Unless further opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion if the debtors provide an estimated closing statement. If opposition is presented at the hearing, the court will consider the opposition and whether a further hearing is proper. The court will issue an order if a further hearing is necessary.

Daniel Wayne Hensley and Madalena Almeida Hensley (together, "Debtors") petition the court for an order authorizing Debtors to sell real property located at 1929 Alta Sierra Rd., Wofford Heights, California 93285 (the "Property") for \$330,000.00 to Kevin Dale Holmes and Maria Isabel Quintanar Holmes. Doc. #23. Debtors filed a voluntary chapter 13 petition on February 18, 2025. Doc. #1. Debtors' chapter 13 plan was filed on March 6, 2025. Plan, Doc. #14.

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

This motion was properly served and noticed. Debtors have a fee simple ownership interest in the Property. Schedule A/B, Doc. #13. Debtors have claimed no exemption of the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc #13. The Property is encumbered by liens and/or security interests totaling \$223,000.00. Schedule D, Doc. #13; Decl. of Daniel W. Hensley, Doc. #25.

Pursuant to Trustee's response to the motion, there is no estimated closing statement attached to the motion. Doc. #27. Further, the moving papers do not indicate that the sale is an arms' length transaction, and Trustee requests clarification as to whether this is an arms' length transaction to ensure the sales price of \$330,000.00 is the fair market value of the Property. Id. Additionally, Debtors' moving papers do not indicate whether the sale is an all-cash sale or that all costs, fees and commissions will be paid in full from the sale proceeds. Id. Without this information, Trustee is not able to determine the impact of the sale on plan feasibility. Id.

In Debtors' response to Trustee's opposition filed on March 30, 2025, Debtors state there is no estimated closing statement available yet because escrow just opened last week. Supp. Decl. of Daniel W. Hensley, Doc. #35. Debtors expect to clear at least \$70,000 from the proposed sale. Id. Debtors will provide an estimated closing statement if it is received before the hearing. Doc. #33. Debtors also clarify that this is an arms' length transaction because the buyers were located by Debtors' realtor and are unknown to Debtors. Hensley Supp. Decl., Doc. #35. Debtors further confirm the sale is all-cash and all costs, fees and commissions will be paid in full out of escrow from the sale proceeds. Id. Debtors believe that the sale can only improve plan feasibility because the alternative would be a foreclosure of the Property that was scheduled for May 14, 2025 at the time Debtors filed their bankruptcy petition. Id.

In the event that the motion is granted, Trustee requests language to be added to the order granting this motion stating: (1) the sale is approved provided all liens are paid in a manner consistent with the plan, notwithstanding relief from stay having been entered; (2) Trustee must approve of the Title Company and Escrow Company to be used in connection with the sale and her approval shall not be unreasonably withheld; and (3) the sale is approved provided that the Trustee approves the estimated closing statement to be prepared in connection with the sale, and when approved, disbursement may only be made in accordance with the approved closing statement. Doc. #27. Debtors are agreeable with the conditions requested by Trustee to be added in the order approving the sale. Hensley Supp. Decl., Doc. #35. The court finds that Trustee's requests are reasonable and should be incorporated into the order approving this motion. The court also finds that the sale of the Property is in the best interests of the estate.

Accordingly, subject to Debtors providing an estimated closing statement, the court is inclined to grant this motion with the language requested by Trustee to be added to the order granting the motion.



7. [20-12069](#)-A-13     **IN RE: SCOTT/SARINA DUTEY**  
[LGT-2](#)

MOTION TO DISMISS CASE  
2-28-2025    [\[180\]](#)

LILIAN TSANG/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
DISMISSED 3/24/25

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

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

An order dismissing this case was entered on March 24, 2025. Doc. #191.  
Therefore, this motion will be DENIED AS MOOT.

1. [23-10963](#)-A-7     **IN RE: JESUS GUERRA**  
[24-1033](#)     [HDN-6](#)

CONTINUED MOTION FOR PRELIMINARY INJUNCTION  
12-4-2024     [[45](#)]

GUERRA V. ADAMS ET AL  
HENRY NUNEZ/ATTY. FOR MV.  
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 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and (f)(2)(A). Defendants Mark S. Adams and California Receivership Group, Inc. (together, "Defendants") timely filed written opposition on March 20, 2025. Doc. #92. Plaintiff Jesus Lopez Guerra ("Plaintiff") timely replied to the opposition on March 27, 2025. Doc. #101. This matter will proceed as scheduled.

After due consideration of the motion, opposition, reply and applicable law, and for the following reasons, this motion will be GRANTED. This court will issue a preliminary injunction staying the foreclosure of Plaintiff's residence by Defendants pending a final judicial resolution of the merits of this adversary proceeding.

#### **I.     JUDICIAL NOTICE**

In support of the motion and response (Doc. ##51, 97), Plaintiff requests the court take judicial notice of true and correct copies of the following documents:

- (1) Proof of Claim No. 5-1 filed in United States Bankruptcy Court for the Eastern District of California docket for the case In re Jesus Lopez Guerra, Case No. 24-10963 (Bankr. E.D. Cal.) ("Bankruptcy Case"), by Mark S. Adams, State Court Receiver. Doc. #51, see Ex. 1, Doc. #49.
- (2) Status Report filed in Superior Court of the State of California, County of Madera for the case City of Madera vs. Jesus Lopez, Case No. MCV086188 ("State Court Action"). Doc. #51, see Ex. 2, Doc. #49.
- (3) Supplemental Points and Authorities in Support of Defendant's Jesus Lopez Opposition to Notice of Motion and Motion for Discharge of Receiver, Exoneration of Surety and Receiver's Certificate for Unpaid Fees and Costs; Receiver's Report of Administration Memorandum of Points and Authorities in Support Thereof; Final Account and Repost and Declaration of Mark Adams; Proposed Order filed in the State Court Action. Doc. #51, see Ex. 3, Doc. #49.
- (4) Ruling on Receiver's Motion for Discharge of Receiver, Exoneration of Surety and Related Relief filed on October 19, 2023 in the State Court Action. Doc. #51, see Ex. 4, Doc. #49.

- (5) Court Reporter's Transcript of Trial Proceedings in State Court Action. Doc. #51, see Ex. 5, Doc. #49.
- (6) Stipulation and Order filed in the State Court Action. Doc. #51, see Ex. 7, Doc. #49.
- (7) Homestead Declaration filed in the State Court Action. Doc. #51, see Ex. 10, Doc. #49.
- (8) Declaration of Victor Jimenez filed in the State Court Action. Doc. #97, see Ex. 1, Doc. #98.
- (9) Declaration of Victor Jimenez filed the State Court Action. Doc. #97, see Ex. 2, Doc. #98.
- (10) December 2022 Monthly Accounting of Receivership Income, Expenses and Interim Fees filed in the State Court Action. Doc. #97, see Ex. 3, Doc. #98.
- (11) January 2023 Monthly Accounting of Receivership Income, Expenses and Interim Fees filed in the State Court Action. Doc. #97, see Ex. 4, Doc. #98.
- (12) Verification of Master Address List filed in the Bankruptcy Case. Doc. #97, see Ex. 5, Doc. #98.
- (13) Order of Discharge filed in the Bankruptcy Case. Doc. #97, see Ex. 6, Doc. #98.
- (14) Notice of Default and Election to Sell Real Property recorded on July 22, 2024 in Madera County as document number 2024015189. Doc. #51, see Ex. 8, Doc. #41; Doc. #97, see Ex. 7, Doc. #98.
- (15) Notice of Trustee's Sale recorded on October 30, 2024 in Madera County as document number 2024023468. Doc. #51, see Ex. 9, Doc. #41; Doc. #97, see Ex. 8, Doc. #98.
- (16) Notice of Entry of Order re Order for Discharge of Receiver, Exoneration of Surety and Receiver's Certificate for unpaid fees and costs filed in the State Court Action. Doc. #51, see Ex. 6, Doc. #49; Doc. #97, see Ex. 9, Doc. #98.

This court may take judicial notice of and consider the records in this adversary case, filings in other court proceedings, and public records. 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). The court takes judicial notice of the existence of exhibits 1 through 9 but does not take judicial notice of the truth or falsity of the contents of any such document for the purpose of making a finding of fact. In re Harmony Holdings, LLC, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008) (collecting cases).

## **II. RELEVANT BACKGROUND**

On October 26, 2021, the City of Madera sued Plaintiff in the State Court Action asserting that Plaintiff's real property located at 209 S. O Street, Madera, California 93637 ("Residence") was a nuisance. Decl. of Jesus Lopez Guerra, Doc. #47; Ex. 4, Doc. #49; Decl. of Byron Z. Moldo, Doc. #93. On March 21, 2022, Mark S. Adams ("Receiver") was appointed as a receiver in the State Court Action. Id. As part of the appointment order, Receiver was permitted to record a receiver's certificate in the amount of \$30,000.00 against the Residence in the State Court Action. Ex. 3, Doc. #98.

Plaintiff filed two voluntary bankruptcy petitions during the pendency of the State Court Action. Moldo Decl., Doc. #93. Plaintiff filed a chapter 13 bankruptcy petition on April 22, 2022, Case No. 22-10699. Id. On July 1, 2022, Defendants filed a proof of claim in Plaintiff's chapter 13 case asserting an

unsecured claim in an unknown amount. Case No. 22-10699, Claim 5-1. Plaintiff's chapter 13 bankruptcy case was dismissed on January 27, 2023. Id.

Thereafter, Plaintiff filed a chapter 7 bankruptcy case on May 4, 2023, Case No. 23-10963. Id. Defendants did not file a proof of claim in Plaintiff's chapter 7 case. Decl. of Henry D. Nunez, Doc. #50. On July 12, 2023, the chapter 7 trustee filed a report of no distribution. Case No. 23-10963, Doc. #32. Plaintiff obtained a discharge in the chapter 7 bankruptcy case on August 15, 2023. Case No. 23-10963, Doc. #46.

Prior to Plaintiff receiving his discharge, Receiver filed a motion to confirm exemption from the automatic stay or, in the alternative, for relief from the automatic stay to permit Defendants to, among other things, adjudicate the costs of Receiver in the State Court Action. Case No. 23-10963, Doc. #35. This court granted Receiver's motion in part and denied the motion in part. Case No. 23-10963, Doc. #48. Specifically, the motion was denied with respect to 11 U.S.C. § 362(b)(4) and granted in part for cause shown pursuant to 11 U.S.C. § 362(d)(1) as to the chapter 7 trustee's interest. Id. The motion was denied as moot in part as to Plaintiff's interest pursuant to 11 U.S.C. § 362(c)(2)(C) because Plaintiff's discharge was entered prior to the hearing on the motion. Id.

After relief from stay was granted in part, Receiver filed a motion in the State Court Action on October 19, 2023 for discharge of his receivership, exoneration of his surety and a receivership certificate for unpaid costs, final accounting, etc. Nunez Decl., Doc. #50. On February 23, 2024, Receiver was discharged from the State Court Action. Moldo Decl., Doc. #93. In addition, the state court authorized Receiver to record a receivership certificate in the amount of \$297,839.03 that would be secured by the Residence. Id.; Ex. 9, Doc. #100. Plaintiff contends that the \$297,839.03 awarded by the state court consists entirely of pecuniary expenses for attorneys' fees, other fees and costs incurred by Defendants in the State Court Action. Nunez Decl., Doc. #50.

On July 22, 2024, Receiver recorded a notice of default commencing the foreclosure of the Residence. Ex. 8, Doc. #49; Nunez Decl., Doc. #50. On September 18, 2024, Plaintiff commenced this adversary proceeding seeking injunctive relief to prevent the foreclosure of the Residence by Defendants, a determination of dischargeability of Defendants' claim, and a finding of contempt for violation of the discharge injunction. Doc. #1. By this motion, Plaintiff requests a preliminary injunction staying the foreclosure of the Residence by Defendants pending a final judicial resolution of the merits of this adversary proceeding.

### III. LEGAL ANALYSIS

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

The Ninth Circuit uses a "'sliding scale' approach to preliminary injunctions." All. for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011). Under that approach, "'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." Fraihat v. U.S. Immigr. and Customs Enf't, 16 F.4th 613, 636 (9th Cir. 2021) (quoting All. for the Wild Rockies, 632 F.3d at 1135).

## A. Likelihood of Prevailing on the Merits

With respect to the claim for relief for determination of dischargeability of debt, Defendants assert that their claim against Plaintiff is nondischargeable because this court's ruling on August 16, 2023 explicitly lifted the automatic stay to permit the state court to adjudicate administrative fees and costs of the receivership. According to Defendants, if Defendants' fees had been discharged, this court would not have lifted the automatic stay to permit adjudication of such fees.

However, that is not the case. "Motions for relief from stay are 'summary proceedings' suitable only to ascertain whether the application of the automatic stay should be modified." Jin Qing Li v. Rosen (In re Jin Qing Li), 2018 Bankr. LEXIS 733, \*10 (B.A.P. 9th Cir. Mar. 12, 2018). "Relief from stay may be granted so long as the movant establishes a 'colorable claim' sufficient to establish his or her entitlement to seek relief from the automatic stay." Id.

Simply because the court granted Defendants relief from the automatic stay to proceed to liquidate Receiver's administrative fees and costs in the State Court Action does not mean that this court took into consideration whether or not those fees were subject to Plaintiff's discharge. This court granting relief from the automatic stay to Defendants does not mean that Plaintiff is unlikely to succeed on the merits of his claim for relief regarding the dischargeability of Defendants' debt.

Defendants next assert that the administrative fees and costs incurred by Receiver remain pending because administrative fees and costs of a receivership are considered an *in rem* obligation of the property itself, citing Miller & Starr, Cal. Real. Est. (4th ed. 2024) § 41:22 ("Receiver's fees are costs of the estate. Thus, as a general rule, the fees and costs of the receiver are charged against the receivership estate. The estate is liable for the fees and costs even though the underlying litigation results in a dismissal of the suit or a judgment for the defendant."). Defendants further assert that California courts have consistently held that receivership costs are paid out of the property or assets in the receivership estate. See S. California Sunbelt Devs., Inc. v. Banyan Ltd. P'ship, 8 Cal. App. 5th 910, 922 (2017) ("Generally, the costs of a receivership are paid from the property in the receivership estate.").

Defendants contend that Defendants' administrative fees and costs are *in rem* obligations of the State Court Action receivership estate and not a personal liability of Plaintiff. Because 11 U.S.C. § 524(a)(1) does not discharge *in rem* liabilities, Plaintiff will not be able to prevail that Defendants violated Plaintiff's discharge.

Plaintiff replies that Defendants cannot have an *in rem* claim against the Residence because Defendants have not met the requirements for an administrative claim against the bankruptcy estate. However, that is not the proper analysis. Defendants' claim against the Residence is the result of Defendants incurring costs due to the Receiver being appointed in the State Court Action, and, according to Defendants, such costs are an *in rem* obligation against the Residence under California law. If Defendants are correct and they have an *in rem* claim against the Residence through the State Court Action, then foreclosing on the Residence likely would not violate Plaintiff's discharge.

Finally, Defendants assert that Plaintiff has not established any damages related to a violation of the discharge order. However, as Plaintiff notes, permitting Defendants to foreclose on the Residence if that foreclosure action

violates Plaintiff's discharge injunction would constitute irreparable injury to Plaintiff.

Without fully adjudicating this adversary proceeding, it is unclear to the court whether the amounts Defendants seek to collect as a result of the State Court Action constitute an *in rem* claim against the Residence. If this court determines that Defendants hold an *in rem* claim against the Residence, then Defendants' actions in foreclosing on the Residence likely would not violate Plaintiff's discharge injunction, and Plaintiff is not likely to succeed in his claims against Defendants. However, if this court determines that Defendants do not hold an *in rem* claim against the Residence as a result of the State Court Action, then Defendants' actions in foreclosing on the Residence likely do violate Plaintiff's discharge injunction, and Plaintiff is likely to succeed in his claims against Defendants.

Because Plaintiff is likely to succeed in his claims against Defendants if this court determines that Defendants do not hold an *in rem* claim against the Residence as a result of the State Court Action, the court finds that Plaintiff has met his burden with respect to this factor.

#### **B. Irreparable Harm to Plaintiff**

Defendants assert that because Plaintiff intends to sell the Residence, Plaintiff will not suffer irreparable harm if a preliminary injunction is not granted. However, under Ninth Circuit authority, threatened foreclosure of real property gives rise to immediate, irreparable harm for injunctive purposes. Sundance Land Corp. v. Cmty. First Fed. Sav. & Loan Ass'n, 840 F.2d 653, 661 (9th Cir. 1988).

The court finds that if the preliminary injunction is not issued, Plaintiff would be subject to the foreclosure of the Residence before there is a determination whether the amounts Defendants seek to collect as a result of the State Court Action constitute an *in rem* claim against the Residence. Even though Plaintiff may decide to sell the Residence in the future, such possibility does not alter the fact that a consensual sale of the Residence by Plaintiff is different from a foreclosure of the Residence by Defendants. Thus, the court finds that, under Ninth Circuit authority, irreparable injury is likely to occur in the absence of a preliminary injunction. This factor weighs in favor of granting the preliminary injunction.

#### **C. Balance of Equities**

Turning to the balance of equities, if the preliminary injunction is issued, Defendants will be delayed from foreclosing on the Residence. However, if the underlying debt is discharged, then Defendants should not be able to foreclose on the Residence.

Accordingly, because Defendants will only be delayed if a preliminary injunction issues and Plaintiff will lose his Residence if a preliminary injunction is not issued, the court finds that the equities balance in favor of Plaintiff. This factor weighs in favor of granting the preliminary injunction.

#### **D. Public Interest Served**

Defendants do not address the public interest factor in their opposition. Plaintiff asserts that the public interest is served by promoting the fair, accurate, transparent and efficient administration of bankruptcy estates.

However, the court believes the relevant public interest raised in this adversary proceeding is preventing the collection of a discharged debt. Because

Defendants should be permitted to foreclose on the Residence only if this court determines that Defendants hold an *in rem* claim against the Residence, this factor weighs in favor of granting the preliminary injunction.

#### **E. "Sliding Scale" Analysis**

Under the Ninth Circuit's "sliding scale" approach to issuing preliminary injunctions, "'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." Fraihat, 16 F.4th at 636 (quoting All. for the Wild Rockies, 632 F.3d at 1135).

Applying the Ninth Circuit's "sliding scale" approach, the court finds that there are serious questions going to the merits in that it is unclear whether Defendants' actions in seeking to foreclose on the Residence constitute the collection of a discharged debt, which would violate Plaintiff's discharge injunction, or constitute the collection of an *in rem* debt, which would not. Further, the balance of hardships tips sharply toward Plaintiff because Plaintiff may lose his Residence if the preliminary injunction is not issued by Defendants collecting on a discharged debt while Defendants are merely delayed in collecting on an *in rem* debt should the court finally adjudicate the adversary proceeding in Defendants' favor. In addition, Plaintiff has shown there is a likelihood of irreparable injury to Plaintiff if Defendants are permitted to foreclose on the Residence and the debt owed to Defendants is not an *in rem* obligation. Finally, issuing a preliminary injunction to prevent collection of a discharged debt is in the public interest.

Accordingly, the Ninth Circuit's "sliding scale" approach to issuing preliminary injunction supports granting Plaintiff's motion for a preliminary injunction pending resolution of the merits of this adversary proceeding.

#### **IV. CONCLUSION**

Based on the foregoing, the court will grant Plaintiff's motion and issue a preliminary injunction staying the foreclosure of the Residence by Defendants pending a final judicial resolution of the merits of this adversary proceeding.

2. [25-10074](#)-A-12 **IN RE: CAPITAL FARMS, INC**  
[25-1009](#) [CAE-2](#)

ORDER TO SHOW CAUSE  
3-18-2025 [\[14\]](#)

CAPITAL FARMS, INC. ET AL V. TECH AG FINANCIAL GROUP, INC

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the missing corporate disclosure statement was filed on March 18, 2025. Doc. #15. Therefore, this order to show cause will be VACATED.

3. [25-10074](#)-A-12     **IN RE: CAPITAL FARMS, INC**  
[25-1009](#)     [FRB-1](#)

MOTION TO DISMISS CAUSE(S) OF ACTION FROM CROSS-COMPLAINT  
3-13-2025     [\[7\]](#)

CAPITAL FARMS, INC. ET AL V. TECH AG FINANCIAL GROUP, INC  
MICHAEL GOMEZ/ATTY. FOR MV.

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

DISPOSITION:     Dropped from calendar

NO ORDER REQUIRED.

A stipulation and order dismissing the cross-complaint that is the subject of this motion was entered on April 8, 2025. Doc. #22. Accordingly, this motion to dismiss is dropped from calendar. This adversary proceeding may be administratively closed when appropriate.

4. [24-10680](#)-A-7     **IN RE: CENTRAL CALIFORNIA CARTAGE CO, INC**  
[24-1053](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
12-2-2024     [\[1\]](#)

EDMONDS V. RYDER TRUCK RENTAL, INC.  
ANTHONY JOHNSTON/ATTY. FOR PL.

NO RULING.

5. [24-10680](#)-A-7     **IN RE: CENTRAL CALIFORNIA CARTAGE CO, INC**  
[24-1054](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
12-2-2024     [\[1\]](#)

EDMONDS V. THE GOODYEAR TIRE & RUBBER COMPANY, INC.  
ANTHONY JOHNSTON/ATTY. FOR PL.

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:     Continue to July 17, 2025 at 11:00 a.m.

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

Based on the plaintiff's status conference statement filed on April 1, 2025 (Doc. #18) and the actions that need to occur before this adversary proceeding can be dismissed pursuant to the proposed settlement agreement, the court intends to continue this status conference to July 17, 2025 at 11:00 a.m. The court will require the plaintiff to file and serve a further status report on or before July 10, 2025 if this adversary proceeding has not been dismissed by that date.