

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Tuesday, May 10, 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. [21-11001](#)-B-11     **IN RE: NAVDIP BADHESHA**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY  
PETITION  
4-21-2021    [[1](#)]

MATTHEW RESNIK/ATTY. FOR DBT.

NO RULING.

2. [21-11001](#)-B-11     **IN RE: NAVDIP BADHESHA**  
[RMB-15](#)

CONFIRMATION HEARING RE: CHAPTER 11 PLAN  
1-21-2022    [[207](#)]

MATTHEW RESNIK/ATTY. FOR DBT.

NO RULING.

Debtor-in-possession Navdip S. Badhesha ("Debtor") seeks confirmation of the *Chapter 11 Plan of Reorganization* dated January 21, 2022 ("Plan"). Docs. #207; #251.

The court approved the *Disclosure Statement Describing Chapter 11 Plan of Reorganization* ("Disclosure Statement") pursuant to 11 U.S.C. § 1125 on March 1, 2022 and set May 10, 2022 at 9:30 a.m. as the date and time for the Plan confirmation hearing. Doc. #231. The Disclosure Statement, Plan, notice of all relevant dates, and a ballot ("Solicitation Package") were required to be sent to the United States Trustee ("UST") and all other parties in interest not later than March 10, 2022. *Id.* Debtor served the Solicitation Package on the UST, all creditors, and parties in interest on March 10, 2022. Doc. #234.

Acceptances or rejections of the Plan were due from creditors not later than April 7, 2022 and objections to confirmation stating why the Plan should not be confirmed, supported by admissible evidence, were due not later than April 26, 2022. Doc. #231. No party in interest timely filed written opposition. See docket generally.

The Debtor and secured creditors CGB Agri Financial Services, Inc. ("AgFi"), Premier Valley Bank ("PVB"), and Fresno First Bank ("FFB") jointly stipulated to modify Section E of Article VI, *Creditor Action Restrained and Default*, as to Agfi, PVB, and FFB only in exchange for securing their ballots accepting the Plan on April 6, 2022. Doc. #238. The court approved the stipulation on April 8, 2022. Doc. #240.

Debtor was required to file and serve a confirmation brief in support of the Plan not later than May 3, 2022. Doc. #231. The brief must state why the Plan should be confirmed and include admissible evidence supporting all applicable elements of 11 U.S.C. § 1129, Debtor's response to any objections, a ballot computation with all returned ballots, and supporting declarations, and must be served on the UST and any party who objects to confirmation. *Id.* Debtor received five timely ballots in response to the Solicitation Package, all of which accepted the Plan. Doc. #253. Debtor timely filed and served the brief, declaration, and ballot computation with all returned ballots on May 3, 2022. Docs. ##251-54. This confirmation hearing will be called and proceed as scheduled.

#### Plan Confirmation

11 U.S.C. § 1129 governs chapter 11 plan confirmation. Debtor has the burden proving that the requirements of § 1129(a) and (b) beyond a preponderance of the evidence. *In re PG&E Corp.*, 617 B.R. 671, 674 (Bankr. N.D. Cal. 2020). "Even with the absence of a creditor's formal objection to confirmation of a plan, 11 U.S.C. § 1129 requires the Court to confirm a plan only if the requirements of § 1129 are met." *In re Econ. Cast Stone Co.*, 16 B.R. 647, 650 (Bankr. E.D. Va. 1981).

#### § 1129(a) (1)

With respect to § 1129(a)(1), the Plan must comply with the applicable provisions of Chapter 11, including §§ 1122 and 1123, which govern the classification of claims and interests and the contents of a plan. *In re Texaco, Inc.*, 84 B.R. 893, 905 (Bankr. S.D.N.Y. 1988). In accordance with §§ 1122 and 1123, the Plan:

#### § 1122

- (a) Provides for division of creditors and interest holders into classes of claims or interests that are substantially similar to other claims and interests of such class with equal treatment within each given class. § 1122(a). The Plan designates eight classes of claims, and each class consists of claims or interests that are substantially similar to each other:

<b>Class</b>	<b>Description</b>
Class 1	Impaired secured claim of AgFi
Class 2	Impaired secured claim of AgFi
Class 3	Impaired secured claim of PVB
Class 4	Unimpaired secured claim of USDA Farm Service ("USDA")
Class 5	Impaired secured claim of FFB
Class 6	Unimpaired secured claim of Safe 1 Credit Union ("CU")
Class 7	Unimpaired priority unsecured claims (None)
Class 8	Impaired general unsecured claims

Doc. #207, Art. III, § C.

§ 1123(a)

- (1) Designates classes, as required by § 1123(a)(1), of claims other than those of the kind specified in §§ 507(a)(2) [administrative expenses], (a)(3) [allowed unsecured claims under § 502(f)], or (a)(8) [unsecured claims of governmental units]. *Id.* As noted above, these are Classes 1-6 (secured), 7 (priority unsecured), and 8 ((general unsecured). *Id.*
- (2) Specifies that Classes 1, 2, 3, 5, and 8 are impaired in accordance with § 1123(a)(2), while Classes 4, 6, and 7 are unimpaired. *Id.*
- (3) Specifies treatment of any class of claims or interests which is impaired under the Plan as required by § 1123(a)(3). *Id.*
- (4) Provides for the same treatment for each claim or interest according to class as required by § 1123(a)(4) unless the holder of the claim or interest agrees to less favorable treatment of such class or interest. *Id.*
- (5) Provides adequate means for implementing and executing the Plan as required by § 1123(a)(5). Debtor will fund the Plan from his employment income, his wife's income, the revenue generated from the raisins, and the funds he will have accumulated in his DIP bank accounts. As such, the Plan complies with the requirements of § 1123(a)(5).
- (6) Does not contemplate the issuance of securities because § 1123(a)(6) is inapplicable since Debtor is an individual.
- (7) Contains no provisions inconsistent with the interests of creditors, equity security holders, and public policy with respect to Debtor's successors under the Plan as required by § 1123(a)(7).
- (8) Since Debtor is an individual, the Plan provides for payment to creditors under the Plan of all claims, or such portion of earnings from personal services performed by Debtor after the commencement of the case, or other future income as is necessary to execute the Plan in accordance with § 1123(a)(8).

§ 1123(b)

- (b) 11 U.S.C. § 1123(b) specifies six permissive provisions that may be included in a chapter 11 plan. The Plan includes those provisions as follows:
  - (1) Under § 1123(b)(1), a plan may "impair or leave unimpaired any class of claims, secured or unsecured, or of interests." The Plan states that Classes 1, 2, 3, 5, and 8 are impaired. *Id.*
  - (2) Section 1123(b)(2) provides that a plan may, "subject to section 365 of this title [Title 11], provide for the assumption,

rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section." The Plan states that Debtor does not have any pre-petition leases or contracts that he seeks to assume under the Plan. Doc. #207, Art. V. The Plan also states that Debtor reserves the right to modify the Plan to designate contracts or leases to be assumed prior to the confirmation hearing. *Id.*, Art. V, § A.2.

- (3) Section 1123(b)(3) specifies that a plan may provide for settlement or adjustment of any claim or interest belonging to the debtor or its estate, and for retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose of any claim or interest. This provision is inapplicable because Debtor is an individual.
- (4) A plan may, under § 1123(b)(4), provide for the sale of all or substantially all of the property of the estate, and distribution of the proceeds to the holders of claims or interests. Debtor is not proposing to sell property of the estate.
- (5) Section 1123(b)(5) permits a plan to "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence . . ." The claims that are modified are secured by collateral other than the Debtor's principal residence.
- (6) Section 1123(b)(6) contains a miscellaneous provision permitting a plan to "include any other appropriate provision not inconsistent with the applicable provisions of this title." The Plan does not appear to contain provisions inconsistent with the Bankruptcy Code.

§ 1123(c)

- (c) Since the Plan was not proposed by an entity other than Debtor, § 1123(c) is inapplicable.

§ 1129(a)(2)

As required by § 1129(a)(2), Debtor, as proponent of the Plan, has provided adequate disclosure to make an informed decision regarding the Plan to all creditors and interest holders in accordance with § 1125, and complied with all applicable provisions of Chapter 11. Docs. #208; #234.

§ 1129(a)(3)

The Plan been proposed in good faith and not by any means forbidden by law in accordance with § 1129(a)(3). Good faith requires that a plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code, as well as a fundamental fairness in dealing with one's creditors. *In re Jorgensen*, 66 B.R. 104, 109 (B.A.P. 9th Cir. 1986); *accord.*, *Platinum Capital, Inc. v. Sylmar Plaza, L.P. (In re Sylmar Plaza, L.P.)*, 314 F.3d 1070, 1074 ("A plan is proposed in good faith where it achieves a result consistent with the objects and

purposes of the Code."); *Ryan v. Loui (In re Corey)*, 892 F.2d 829, 835 (9th Cir. 1989); *In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir. 1984) ("[F]or purposes of determining good faith under section 1129(a)(3) . . . the important point of inquiry is the plan itself and whether such plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.").

Debtor contends that the Plan was proposed in good faith, the sole purpose of which is to resolve the obligations to his creditors. Doc. #252. This is further evidenced by timely responding to and complying with all deadlines and stipulating to additional provisions with creditors to obviate litigation. There has been no objection to Debtor's good faith.

#### § 1129(a)(4)

Pursuant to § 1129(a)(4), the Plan provides that payments made or to be made to Debtor's attorneys and other professionals or holders of administrative claims, including payment of compensation and reimbursement of expenses, shall be made only after entry of an approval order by the court following a notice and a hearing. All payments made or to be made have or will be disclosed. The Plan estimates (i) a \$40,000 administration claim in favor Debtor's attorney, Resnik Hayes Moradi LLP; (ii) \$0.00 in Clerk's Office Fees, which are paid when due; and (iii) \$250 per quarter to the UST for quarterly fees as required by 28 U.S.C. § 1930(a)(6) until a final decree is entered or the case is dismissed or converted. Doc. #207, Art. III, § B.1.

#### § 1129(a)(5)

Debtor is an individual and will continue to manage his own affairs. Accordingly, the Plan discloses the identity and affiliations of any individual proposed to serve as an officer, director, or voting trustee of the debtor after confirmation of the Plan as required by § 1123(a)(5). *Id.*, Art. IV.

#### § 1129(a)(6)

Section 1129(a)(6) is not applicable here. Debtor is not subject to the jurisdiction of any rate regulatory commissions. No changes in regulatory rates are provided for in the Plan, so no governmental agency needs to approve any rate changes. *Id.*, Art. V, § B.

#### § 1129(a)(7)

With respect to § 1129(a)(7), each holder of a claim or interest in an impaired class has either accepted the Plan or will receive an amount equal to or greater than the amount such holder would receive or retain if Debtor were liquidated under chapter 7. The Plan provides that Classes 1 (AgFi), 2 (AgFi), 3 (PVB), 5 (FFB), and 8 (general unsecured) are impaired. *Id.*, Art. III, § C.

Classes 1, 2, 3, 5, 6, and 8 affirmatively voted to accept the Plan. Doc. #253, *Exs. A-E*. Further, Classes 1, 2, 3, and 5 stipulated to certain modifications in the Plan in exchange for their votes in favor

of the Plan. Docs. #238; #240. Classes 4 and 7 did not vote for the Plan, but these classes, with Class 6, are unimpaired. Doc. #207, Art. III, § C. The Plan therefore complies with § 1129(a)(7).

#### § 1129(a)(8)

All impaired classes affirmatively voted to accept the plan. Doc. #253, Exs. A-E. The Plan complies with § 1129(a)(8) because each class of claims or interests has either accepted the Plan or is not impaired under the Plan.

#### § 1129(a)(9)

Section 1129(a)(9) requires particular treatment with respect to certain priority claims unless the holder has agreed to a different treatment. Absent consent to a different treatment, § 1129(a)(9)(A) requires payment of administrative claims specified in § 507(a)(2) and (a)(3) in full on the effective date. Debtor's counsel has agreed to accept a different treatment.

Section 1129(a)(9)(B) requires certain priority claimants specified in § 507(a)(1), (a)(4), (a)(5), (a)(6), or (a)(7) to receive full payment of the allowed amount of their respective priority claims in cash on the effective date of the plan if the class has not voted to accept the Plan, or deferred cash payments of a value as of the effective date of the Plan equal to such allowed claim if the class has accepted the Plan. Debtor does not have any such claimants. Doc. #207, Art. III.

Section 1129(a)(9)(C) applies to priority tax claims under § 507(a)(8). The Plan provides for payment of these claims as follows:

#### Internal Revenue Service

The Internal Revenue Service ("IRS") filed Claim 2 in the amount of \$7,801 for 2019 taxes. This claim is based on an estimated liability for not filing his 2019 tax return. Debtor has now filed the tax return and is owed a refund, so Debtor has no tax liability for the 2019 tax year. Debtor anticipates that the IRS will file an amended claim with \$0.00 liability and reserves the right to file a claim objection if no amended claim is filed.

#### California Department of Tax and Fee Administration

The California Department of Tax and Fee Administration ("CDTFA") filed Claim 8 in the amount of \$78,989.72 for priority taxes associated with BIL Inc. ("BIL"), a corporation formed with Debtor's brother-in-law, Tarnvir Dhaliwal, to begin a Deli Delicious franchise in 2013. Docs. #207-08. Debtor filed an objection to CDTFA's claim on April 11, 2022 (Doc. #241), which is set for hearing on May 24, 2022. CDTFA's response or opposition is due on or before May 10, 2022. Though Debtor anticipates that CDTFA will file opposition to the objection to claim that will need to be litigated, he does not believe that the pendency of the objection is an impediment to the Plan because he anticipates prevailing on the objection and CDTFA did not object to Plan confirmation.

Notwithstanding CDTFA's failure to file opposition to Plan confirmation, the pendency of Debtor's objection to CDTFA's claim is problematic. Debtor anticipates prevailing on the objection to claim, but this is speculative. If Debtor does not prevail, then absent CDTFA's consent, § 1129(a)(9)(A) will require payment in full of CDTFA's claim on the effective date of the Plan.

#### Franchise Tax Board

The Franchise Tax Board ("FTB") filed Claim 6 with a priority amount of \$3,516.53 and general unsecured amount of \$879.13. The priority amount will be paid in full on the effective date of the Plan and the general unsecured amount will be paid pursuant to Class 8.

See Doc. #207, Art. III, § B.2. Except for CDTFA's claim and Debtor's pending objection to the same, the Plan otherwise complies with § 1129(a)(9).

#### § 1129(a)(10)

Section 1129(a)(10) is satisfied because all impaired classes have voted to accept the Plan. Doc. #253, Exs. A-E. None of these parties are insiders.

#### § 1129(a)(11)

Section 1129(a)(11) requires the court to find that confirmation is not likely to be followed by liquidation or need for further financial reorganization. "The Code does not require the debtor to provide that success is inevitable, . . . and a relatively low threshold of proof will satisfy § 1129(a)(11)." *Computer Task Group, Inc. v. Brotby (In re Brotby)*, 303 B.R. 177, 191 (B.A.P. 9th Cir. 2003) (citations omitted).

Debtor contends that the income and expense provisions provided with the Disclosure Statement indicate his ability to fund the Plan. Doc. #211, Ex. B; cf. Docs. ##209-10. The projections show that Debtor will have sufficient income from his employment, his wife's employment, the income generated from the raisin production, and the funds he will have accumulated in his DIP bank account. The Plan appears to be feasible as required by § 1129(a)(11)

#### § 1129(a)(12)

Section 1129(a)(12) is satisfied because all mandatory fees have been paid or will be paid on the effective date of the Plan, and no governmental unit has claimed any default in the payment of fees required under 28 U.S.C. § 1930.

#### § 1129(a)(13)

Section 1129(a)(13) is not applicable because Debtor is an individual and is not responsible for paying any retiree benefits.



§ 1129(a) (14)

Section 1129(a) (14) is not applicable because Debtor has not been ordered to pay any domestic support obligations.

§ 1129(a) (15)

Unsecured Class 8 has voted to accept the Plan and no party has objected to the Plan, so § 1329(a) (15) is satisfied.

§ 1129(a) (16)

Debtor is not a corporation or a trust, so § 1129(a) (16) is inapplicable.

§ 1129(b)

If Debtor prevails on his objection to CDTFA's claim, then all elements of § 1129(a), including subsection (a) (8), will have been satisfied. Debtor will not need to satisfy the conditions of § 1129(b).

§ 1129(c)

This is the only Plan in this case under consideration at this time as required by § 1129(c).

§ 1129(d)

No governmental entity has requested that the Plan not be confirmed because Debtor's principal purpose was to avoid taxes or application of Section 5 of the Securities Act of 1933. Section 1129(d) is not implicated.

§ 1141(d)

Since Debtor is an individual, an order of discharge will not be entered until Debtor completes all Plan payments, files a motion to enter the discharge, and provides evidence that all payments have been made as required by § 1141(d). Doc. #207, Art. VI, § H.

Minor Modifications

Debtor requests two minor modifications. First, Debtor's brief says that Article VI, § D should have included "more robust" language regarding quarterly fees and post-petition quarterly reports required by the UST. Doc. #251. Thus, under § 105(a), Debtor requests that the current language in this section be replaced and interlineated with the following language:

**D. U.S. Trustee Quarterly Fees and Postpetition Quarterly Reports**

The Reorganized Debtors shall be responsible for the timely payment of all fees incurred after the Effective Date pursuant to 28 U.S.C. § 1930(a) (6) until a final decree is entered or the case is dismissed or converted. The resumption of the payment of fees shall occur if an order has been entered on the docket that vacates any of the above orders or reopens it for a reason other than that which is purely administrative.

The Debtor will file post-confirmation reports in the manner prescribed by 11 U.S.C. § 1106(a)(7) and Fed. R. Bankr. P. 2015(a)(5) for every calendar quarter through the date the court enters a final decree closing the case, an order dismissing the case, or an order converting the case to another chapter in bankruptcy. The resumption of the filing of post-confirmation reports shall occur if an order has been entered on the docket that vacates any of the above orders or reopens it for a reason other than that which is purely administrative.

Doc. #251. Additionally, Debtor and certain secured creditors stipulated to, and the court approved, a modification to Article VI, § E entitled *Creditor Action Restrained and Default* as to AgFi, PVB, and FFB only. This modification is accomplished by adding the following language to supersede the proposed treatment of Classes 1, 2, 3, and 5 of the Plan:

Creditors may not take any action to enforce either preconfirmation obligations or obligations due under the Plan, so long as the Reorganized Debtor is not in material default under the Plan.

As to those claimants whose claims are not agreed upon by the parties (i.e., memorialized in a Plan treatment stipulation), if the Reorganized Debtor fails to make any payment required under the Plan, or to perform any other obligation required under the Plan for more than 30-days after the time specified in the Plan, the affected creditor may serve upon Debtors and Debtors' attorney (if any) a written notice of default.

As to AgFi, PVB, and FFB, the Debtor is in material default under the Plan if he fails within 25-days of the service of such notice of default, delivered electronically or through any other lawful means, to cure the default.

If the Debtor is in material default under the Plan as to AgFi, PVB, and FFB, the affected creditors may: (i) exercise its rights and remedies available under its loan documents and applicable nonbankruptcy law; (ii) take any action permitted under bankruptcy or nonbankruptcy law to enforce the terms of the Plan; or (iii) move to dismiss this case or to convert this case to Chapter 7.

Doc. #240.

Pursuant to Federal Rule of Bankruptcy Procedure 3019(a), the court will find that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification and deem it accepted by all creditors and equity security holders who have

previously accepted the plan. Debtor shall promptly file an updated version of the Plan to reflect the above changes. Debtor shall also separately file a corresponding "redline" version with tracked changes.

#### Conclusion

The Plan appears to satisfy most of the requirements of § 1129. The outcome of Debtor's objection to CDTFA will determine whether § 1129(a)(9)(A) is met. If Debtor prevails on that objection, then all of the prerequisites for plan confirmation under § 1129 will have been satisfied. This confirmation hearing will be called and proceed as scheduled.

3. [17-13797](#)-B-9      **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-18](#)

CONTINUED OBJECTION TO CLAIM OF TULARE HOSPITALIST GROUP,  
CLAIM NUMBER 231  
1-8-2020    [\[1784\]](#)

TULARE LOCAL HEALTHCARE  
DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:      Continued to August 23, 2022 at 9:30 a.m.

NO ORDER REQUIRED.

Due to ongoing discussions between Tulare Local Healthcare District ("District") and Tulare Hospitalist Group, the parties stipulated to continue the hearing on this objection to August 23, 2022. Doc. #2491. On May 4, 2022, the court approved the stipulation and continued the hearing to August 23, 2022 at 9:30 a.m. as a scheduling conference. Doc. #2497. The District's counsel shall file and serve a status report not later than seven days before the hearing. *Id.*

4. [17-13797](#)-B-9      **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-19](#)

CONTINUED OBJECTION TO CLAIM OF GUPTA-KUMAR MEDICAL  
PRACTICE, CLAIM NUMBER 232  
1-8-2020    [[1789](#)]

TULARE LOCAL HEALTHCARE  
DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:      Continued to August 23, 2022 at 9:30 a.m.

NO ORDER REQUIRED.

Due to ongoing discussions between Tulare Local Healthcare District ("District") and Gupta-Kumar Medical Practice, the parties stipulated to continue the hearing on this objection to August 23, 2022. Doc. #2493. On May 4, 2022, the court approved the stipulation and continued the hearing to August 23, 2022 at 9:30 a.m. as a scheduling conference. Doc. #2498. The District's counsel shall file and serve a status report not later than seven days before the hearing. *Id.*

5. [17-13797](#)-B-9      **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-25](#)

CONTINUED OBJECTION TO CLAIM OF INPATIENT HOSPITAL GROUP,  
INC., CLAIM NUMBER 230  
1-10-2020    [[1834](#)]

TULARE LOCAL HEALTHCARE  
DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:      Continued to August 23, 2022 at 9:30 a.m.

NO ORDER REQUIRED.

Due to ongoing discussions between Tulare Local Healthcare District ("District") and Inpatient Hospital Group, Inc., the parties stipulated to continue the hearing on this objection to August 23, 2022. Doc. #2495. On May 4, 2022, the court approved the stipulation and continued the hearing to August 23, 2022 at 9:30 a.m. as a scheduling conference. Doc. #2499. The District's counsel shall file

and serve a status report not later than seven days before the hearing. *Id.*

1:30 PM

1. [22-10105](#)-B-7     **IN RE: ANNETTE MEJIA**  
[ICE-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
3-30-2022     [[24](#)]

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

DISPOSITION:        Conditionally denied.

ORDER:                The court will issue an order.

Chapter 7 trustee Irma C. Edmonds ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on March 28, 2022. Docs. #24; #26.

Annette Mejia ("Debtor") timely filed written opposition. Doc. #28. Debtor says that somebody broke into her neighborhood mailbox and stole mail in February 2022, which was never recovered. Two weeks later, Debtor learned that the post office was holding mail for her residence. Debtor does not know when the mailboxes will be repaired, but for now she has to pick up mail at the post office. Debtor signed up for electronic notice from the Bankruptcy Noticing Center and learned about this motion via email. Debtor claims she never received any mail about the meeting of creditors, nor a large white envelope with forms to return to Trustee. Debtor understands the importance of the meeting and only missed it because she did not get the notice. *Id.*

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for May 9, 2022 at 12:00 p.m. See Doc. #25. If Debtor fails to appear and testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

2. [21-12620](#)-B-7     **IN RE: LEORA GALLICHIO**  
[JES-2](#)

MOTION TO SELL  
3-28-2022    [\[23\]](#)

JAMES SALVEN/MV  
JEFFREY ROWE/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 2012 Toyota Camry and a 2012 Chrysler 300 (collectively "Vehicles") to Leora Lorraine Gallichio ("Debtor") for \$10,825.00, subject to higher and better bids at the hearing. Doc. #23.

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. The Vehicles are listed in the schedules as follows:

- a. 2012 Toyota Camry SE: 163,568 approximate mileage, valued at \$5,292.00; and
- b. 2012 Chrysler 300: 137,087 approximate mileage, valued at \$6,988.00.

Doc. #13, *Am. Sched. A/B*. Neither of the Vehicles appear to be encumbered by any liens or security interests. *Id.*, *Am. Sched. D*. However, this sale is subject to all liens and encumbrances, known or unknown. Doc. #23.

Trustee declares that Debtor offered to purchase Vehicles for \$10,825.00, which he accepted subject to court approval and higher and better bids. Doc. #25. 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. *Id.* The sale prices were determined by estimating the fair market value of each vehicle. *Id.* The Toyota Camry will net \$2,000.00 to the estate after application of Debtor's \$3,325.00 exemption credit, and the Chrysler 300 will net \$5,500.00 to the estate with no claimed exemption credit. Doc. #23, *cf.* Doc. #13, *Am. Sched. C*. Combined, the total net to the estate will be \$7,500.00 absent any overbidders. Trustee is in receipt of the funds and is awaiting court approval. Doc. #25. Trustee believes the proposed sale is in the best interests of creditors and the estate because it is for the full and fair market value of the Vehicles. *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 was proposed in good faith. The sale subject to higher and better bids will maximize estate recovery and yield the best possible sale price. No party has filed 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, and no warranties or representations are included with the sale; the Vehicles are being sold "as-is, where-is."

3. [22-10128](#)-B-7     **IN RE: JASON HARPER**

MOTION TO AVOID JUDICIAL LIEN AND RELEASE OF SECURITY  
INTEREST OF CREDITORS  
4-21-2022    [[44](#)]

JASON HARPER/MV

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Denied without prejudice.

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

Jason Scott Harper ("Debtor"), *pro se*, seeks to avoid the judicial lien(s) of (a) Kathleen Allison, Secretary/Bailee; (b) Rob Bonta, California Attorney General; (c) the Riverside County/Assessor County Clerk/Recorder; (d) California Substance Abuse Treatment Facility; (e) the Franchise Tax Board; and (f) the Internal Revenue Service (collectively "Creditors") with respect to (1) "Debtor, and all Security Interest[;]" (2) Television 15' AMP'D Color TV; (3) fan; (4) hot-pot; (5) tablet; (6) clothes (sweat-suits, shorts, T-shirts, underwear, socks, shoes); (7) hygiene products; (8) headphones & radio; (9) book light; (10) legal books; and (11) ADA appliances (collectively "Property"). Doc. #44.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("Rules") and Local Rules of Practice ("LBR"), and failure to make a *prima facie* showing that Debtor is entitled to the relief sought.

The Local Rules of Practice ("LBR") "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure." LBR 1001-1(b). The most up-to-date rules are available on the court's website.<sup>1</sup>

Docket Control Number

First, LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case.

Here, the motion and supporting documents did not contain a DCN. Docs. ##44-45. Since Debtor is *pro se*, the DCN should use his initials. For example, a DCN such as JSH-1 would have been sufficient because that DCN has not yet been used.

#### Required Notice Language

Second, LBR 9014-1(d)(3)(B)(i) requires the notice of hearing to advise potential respondents whether and when written opposition must be filed and served. When a motion is filed on fewer than 28 days' notice, LBR 9014-1(f)(2)(C) states that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit additional briefing and evidence.

This motion was filed on April 21, 2022 and set for hearing on May 10, 2022. Docs. ##44-45. May 10, 2022 is 19 days after April 21, 2022, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). The notice did not provide any information regarding whether and when opposition must be filed and served. Since the hearing was noticed under the procedure specified in LBR 9014-1(f)(2), Debtor was required to inform respondents that written opposition was not required, any opposition shall be presented at the hearing, and if opposition is presented, or if there is other good cause, the court may continue the hearing.

#### Court Website

Third, the notice of hearing did not contain necessary language informing potential respondents of the pre-hearing dispositions that are available on the court's website. Doc. #45. LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

#### Certificate of Service

Fourth, no certificate of service was filed with this motion. LBR 9014-1(e) requires the movant to serve all pleadings and documents filed in support of a motion on or before the day they are filed, with proof of such service in the form of a certificate of service to be filed with the Clerk concurrently with the pleadings or documents served, or not more than three days after they are filed. LBR

9014(e) (1), (e) (2). LBR 9014-1(e) (3) requires each proof of service to be filed separately, bear the DCN of the matter to which it relates, and identify the title of the pleadings and documents served.

Further, Rule 4003(d) requires that proceedings under § 522(f) to avoid a lien "shall be commenced by motion in the manner provided by Rule 9014." Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b) (1), (b) (3).

Since the Creditors include state government agencies and officers, Rule 7004(b) (6) is also applicable. A state or municipal corporation or other governmental organization may be served by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state.

In addition to serving all Creditors, Peter L. Fear ("Trustee") was appointed as the chapter 7 trustee in this case. Trustee is the representative of the estate and is responsible for its administration. 11 U.S.C. §§ 323, 704. Trustee must be served in accordance with Rule 7004.

#### Signatures

Fifth, neither the motion nor the notice contains the Debtor's signature. Docs. ##44-45. Both documents have a crossed-out section for the signature of the "Honorable René Lastreto II[,]" but neither are signed by Debtor or any other representative. LBR 9004-1(c) requires all pleadings and non-evidentiary documents to be signed by the party if that party is appearing *in propria persona* with the name of the person signing the document typed underneath the signature.

#### Failure to State a Claim to Relief

Sixth, even if these procedural errors were addressed, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

The caption indicates that Debtor is requesting relief under 11 U.S.C. § 523 and 18 U.S.C. § 1001. Section 523 governs exceptions to discharge for certain types of debts. Debtor seeks lien avoidance but has invoked a statute that provides a cause of actions to creditors seeking to preclude the discharge of a debt owed by a debtor. This

type of relief would aid the Creditors, not Debtor. Further, a determination of the dischargeability of a debt requires an adversary proceeding. Rule 7001(6). None have been filed here.

Debtor cites to Title 18 of the U.S. Code, Chapter 47, § 1001. That chapter relates to crimes for fraud and false statements. It is unclear what Debtor is trying to accomplish.

11 U.S.C. § 522(f) governs avoidance of liens. To avoid a lien under § 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, the motion has not established (1) Debtor is entitled to an exemption; (3) the lien(s) impair the exemption; and (4) the lien is a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). No evidence of any liens or non-possessory, non-purchase money security interests have been provided.

Rule 9013 requires a request for an order to be by written motion, unless made during a hearing. "*The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought.*" Rule 9013 (emphasis added).

The particularity requirement is restated in the local rules:

The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and *shall state with particularity the factual and legal grounds therefor*. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability.

LBR 9014-1(d)(3)(A).

#### Conclusion

Despite these procedural and substantive errors, the court must treat *pro se* litigants "with great leniency when evaluation compliance with the technical rules of civil procedure." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) (citing *Draper v. Coombs*, 795 F.2d 915, 924 (9th Cir. 1986)). "Thus, before dismissing a *pro se* complaint the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant

uses the opportunity amend effectively." *Ferdik*, 963 F.2d at 1261, citing *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).

The above grounds are enough to deny this motion. When a bankruptcy court operates within its local rules, there is no abuse of discretion in application of those local rules. *In re Thao Tran Nguyen*, 447 B.R. 268, 281 (B.A.P. 9th Cir. 2011) (*en banc*).

This matter will be called as scheduled because Debtor is not represented by counsel. This motion will be DENIED WITHOUT PREJUDICE for the reasons stated above.

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<sup>1</sup> See LBR (eff. May 2, 2022), <http://www.caeb.uscourts.gov/LocalRules.aspx>.

4. [21-11652](#)-B-7     **IN RE: ISAAC BORUNDA**  
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-11-2022    [[28](#)]

SANTANDER CONSUMER USA INC./MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
JOHN KIM/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:     Denied as moot.

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

Santander Consumer USA Inc. DBA Chrysler Capital as servicer for CCAP Auto Lease LTD. ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2019 RAM 1500 ("Vehicle"). Doc. #28.

Debtor filed non-opposition on April 19, 2022 stating that he indicated in his Statement of Intentions to surrender the Vehicle. Doc. #36. The Statement of Intention filed with the petition on June 29, 2021 states that the debtor would retain the Vehicle and enter into a Reaffirmation Agreement. Doc. #1. No other party in interest timely filed written opposition. This motion will be DENIED AS MOOT.

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 U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief

requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtor's discharge was entered on October 12, 2021. Doc. #17. Therefore, the automatic stay terminated with respect to the debtor on October 12, 2021.

This motion relates to an executory contract or lease of personal property. The case was filed on June 29, 2021 and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to § 365(p)(1), the leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law.

Since the debtor filed non-opposition, the court presumes the debtor has not exercised his option to assume the lease under § 365(p)(2).

Movant may submit an order denying the motion as moot and confirming that the automatic stay has already terminated on the grounds set forth above. No other relief is granted. No attorney fees will be awarded in relation to this motion.

5. [22-10256](#)-B-7     **IN RE: TONYA THOMPSON**  
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
4-5-2022     [\[27\]](#)

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

DISPOSITION:     Conditionally denied.

ORDER:     The court will issue an order.

Chapter 7 trustee Peter L. Fear ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on April 4, 2022. Doc. #27.

Tonya Sue Thompson ("Debtor") timely filed written opposition. Doc. #29. Debtor says that she came into the clerk's office because she did not know that the meeting would be held telephonically. *Id.*

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for May 16, 2022 at 3:00 p.m. See Doc. #26. If Debtor fails to appear and testify at the rescheduling meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

6. [22-10687](#)-B-7      **IN RE: ORCHID HOSPICE INC.**

ORDER TO APPEAR AND SHOW CAUSE WHY A PATIENT CARE OMBUDSMAN  
SHOULD NOT BE APPOINTED  
4-29-2022    [\[7\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.

NO RULING.

Orchid Hospice, Inc. ("Debtor") filed chapter 7 bankruptcy on April 21, 2022. Doc. #1. In the petition, Debtor described itself as a health care business as defined in 11 U.S.C. § 101(27A). *Id.*, *Voluntary Petition*, at 2, ¶ 7.

Based on this selection, the court issued an *Order to Appear and Show Cause Why a Patient Care Ombudsman Should Not Be Appointed* on April 29, 2022. Doc. #7.

Under 11 U.S.C. § 333(a)(1), if a chapter 7 debtor is a health care business, the court shall order within 30 days after the commencement of the case the appointment of an ombudsman to monitor the quality of patient care and to represent patients' interests, unless the court finds such appointment is not necessary for patient protection under the specific facts of the case.

Ms. Josephine Granat, Debtor's president, submitted a declaration responding to the court's order. Doc. #9. The declaration says Debtor's operations were closed in February 2022, so no ombudsman is necessary. *Id.* But the declaration references an exhibit which was not filed. Further, no foundation is provided for the admission of the exhibit.

This matter will be called and proceed as scheduled. The court intends to order the appointment of an ombudsman unless the specific facts of this case deem such appointment not necessary for patient protection. The court invites comments from the case trustee, Mr. Vetter, the United States Trustee, and other parties in interest.