UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, May 26, 2021
Place: Department B – Courtroom #13
Fresno, California

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

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. 18-13708-B-13 **IN RE: LEONARDO CHAVEZ**
NSV-7

MOTION TO MODIFY PLAN
4-16-2021 [103]

LEONARDO CHAVEZ/MV
NIMA VOKSHORI/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, 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.

Upon request by the chapter 13 trustee, the debtor shall amend Schedule I and J to update current income and expenses. If Debtor is otherwise unable to make the plan payments, he shall file, serve, and set for hearing a motion to modify the plan.

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

2. 20-13217-B-13 **IN RE: LARRY/DOLORES SYRA**
MAZ-4

CONTINUED MOTION TO MODIFY PLAN
3-12-2021 [76]

DOLORES SYRA/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN,

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 originally filed on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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 Systems, 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.

This matter was previously continued so Larry N. Syra and Dolores G. Syra ("Debtors") could file and serve a written response to chapter 13 trustee Michael H. Meyer's ("Trustee") objection to plan confirmation. Docs. ##86-87. Trustee contended that the plan payment must increase to $3,004.57 per month effective March 2021 to fund the plan. Doc. #84.

Debtors responded on April 26, 2021 agreeing to increase plan payments to $3004.57. Doc. #89. Since Debtors had already made a March payment of $2,889.00, Debtors promised to immediately remit to Trustee an additional $115.57 to bring the plan current with the increased payment amount. Doc. #90. Trustee withdrew his objection on April 28, 2021. Doc. #92.

Accordingly, this motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

3. 18-10219-B-13 **IN RE: EFREN/ANA ELENEZ**
TMO-1

MOTION TO MODIFY PLAN
4-15-2021 [38]

ANA ELENEZ/MV
T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/ATTY. FOR MV.

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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, 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.

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

4. 19-12622-B-13 **IN RE: JULIE MARTINEZ**
FW-7

MOTION TO MODIFY PLAN
4-12-2021 [93]

JULIE MARTINEZ/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 30, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2).

Julie Ann Martinez ("Debtor") proposes this Fifth Modified Plan for confirmation to provide for missed payments and re-amortize secured debt over 84 months under 11 U.S.C. § 1329(d) as amended by the COVID-19 Bankruptcy Relief Extension Act of 2021. Doc. #93.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to plan confirmation because Debtor will not be able to make all payments under the plan and comply with the plan as required by 11 U.S.C. § 1325(a)(6). Doc. #102. Trustee states that Debtor is delinquent on plan payments in the amount of $4,370.00. *Id.*

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtor shall file and serve a written response not later than June 16, 2021. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtors' position. Trustee shall file and serve a reply, if any, by June 23, 2021.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than June 23, 2021. If Debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

5. 21-10822-B-13 **IN RE: LETICIA PENA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-7-2021 [27]

BENNY BARCO/ATTY. FOR DBT.
INSTALLMENT FEE PAID $157.00 ON 5/7

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fee due on May 3, 2021 was paid on May 7, 2021. Therefore, the Order to Show Cause will be vacated.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

6. 21-10124-B-13 **IN RE: KIRK/JAYCEE KILLIAN**
MAZ-1

CONTINUED MOTION TO VACATE DISMISSAL OF CASE
3-2-2021 [28]

JAYCEE KILLIAN/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
DISMISSED 03/03/2021. RESPONSIVE PLEADING.

NO RULING.

The court is inclined to set a short discovery schedule and consolidate this motion with the United States Trustee's related adversary proceeding, *U.S. Trustee v. Killian, et al.*, no. 21-01005.

7. 21-10726-B-13 **IN RE: DAVID CONTRERAS**
BDB-1

MOTION TO CONFIRM PLAN
4-8-2021 [17]

DAVID CONTRERAS/MV
BENNY BARCO/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 30, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1).

David Contreras ("Debtor") seeks to confirm this First Modified Plan. Doc. #17. Debtor's original plan (Doc. #14) was not confirmed.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to plan confirmation because Debtor will not be able to make all payments under the plan and comply with the plan as required by 11 U.S.C. § 1325(a)(6). Doc. #24. Trustee states that Debtor is delinquent on plan payments in the amount of $1,290.65. *Id.*

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtor shall file and serve a written response not later than June 16, 2021. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtors' position. Trustee shall file and serve a reply, if any, by June 23, 2021.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be

filed, served, and set for hearing, not later than June 23, 2021. If Debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

8. 20-13727-B-13 **IN RE: ADOLFO/AURELIA HERNANDEZ**
SL-2

MOTION TO CONFIRM PLAN
3-23-2021 [44]

AURELIA HERNANDEZ/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Adolfo and Aurelia Hernandez ("Debtors") seek confirmation of their First Modified Chapter 13 Plan. Doc. #44.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the local rules.

There are a number of procedural deficiencies in this motion.

First, the original motion documents contained the wrong hearing date: May 25, 2021 at 9:30 a.m. Docs. #44-50. Debtors corrected this issue with an amended notice filed on March 23, 2021. Doc. #52. However, this amended notice does not contain a certificate of service evidencing that it was served on all parties.

Local Rule of Practice ("LBR") 9014-1(d)(1) requires every motion or other request for an order to be comprised of a motion, notice, evidence, and a certificate of service. LBR 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the Clerk of the court concurrently with the pleadings or documents served, or not more than three days after the papers are filed. The certificate of service should be filed separately from all other documents. LBR 9004-2(c)(1), (e)(1).

As result, when creditor Pelican Holdings, LLC ("Creditor") timely objected to confirmation, the opposition also contained the wrong hearing date: May 25, 2021. Doc. #54. Creditor's certificate of service was attached to the objection in violation of LBR 9004-1(c) and (e), which require certificates of service to be filed separately from all other pleadings. Creditor's objection also contained the wrong Docket Control Number ("DCN"), ETW-2. LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (e)(3) are the rules about DCNs. These rules require the 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. Creditor's objection was not

a new matter and directly pertained to this motion to confirm plan, so Creditor should have used DCN SL-2 to indicate that it was in response to the motion to confirm plan.

Debtors replied to Creditor's objection. Doc. #55. This reply contained the wrong DCN (ETW-2 rather than SL-2) and the wrong hearing date (May 25, 2021 rather than May 26, 2021). Debtors did file a certificate of service and properly amended it to include service on Creditor, but both certificates contain the wrong DCN and the wrong hearing date.

Although the incorrect DCN was caused by Creditor's error, the wrong hearing date was caused by the Debtors' inadvertence. Although Debtors did correct the wrong hearing date by way of the amended notice (Doc. #52), there is no evidence that this amended notice was served on any parties in interest. Further, the reply, declaration supporting the reply, and two certificates of service all contained the wrong hearing date. If parties were in fact served the amended notice, then the later-filed responsive pleadings would have confused parties in interest as to the correct hearing date.

For above reasons, this motion will be DENIED WITHOUT PREJUDICE.

9. 19-14935-B-13 **IN RE: MARIA SOTO**
TMO-1

MOTION TO REFINANCE
5-5-2021 [57]

MARIA SOTO/MV
T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Maria Del Carmen Soto ("Debtor") asks the court for permission to borrow $150,500.00 from Cardinal Financial Company, L.P. ("Lender") at a rate of 3.375% to refinance her first priority mortgage owned by Freedom Mortgage Company ("Creditor") secured by 2900 Tori Court, Atwater, CA 95301 ("Property"). The new loan will be secured by the Property. The monthly payment will be $1,061.67 and the proceeds of

the loan will be used to pay the chapter 13 plan in full. Opposition was not required and may be presented at the hearing.

In the absence of opposition, this motion will be GRANTED.

LBR 3015-1(h)(C) allows the debtor, with court approval, to refinance existing debts encumbering the debtor's residence if the trustee's written consent is filed with or as part of the motion. The trustee's approval is a certification to the court that: (i) all chapter 13 plan payments are current; (ii) the chapter 13 plan is not in default; (iii) the debtor has demonstrated an ability to pay all future plan payments, projected living expenses, and the new debt; (iv) the new debt is a single loan incurred only to refinance existing debt encumbering the debtor's residence; (v) the only security for the new debt will be the debtor's existing residence; and (vi) the monthly payment (including principal, interest, impounds, taxes, insurance, association fees, bonds, and other assessments) will not exceed the greater of the debtor's current such monthly payment on the existing debt being paid or $2,500.00.

If the trustee will not give consent, the debtor may still seek court approval under LBR 3015-1(h)(E) by filing and serving a motion on the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1. Debtor complied with Fed. R. Bankr. P. 2002 by filing this motion on 21 days' notice with no opposition required pursuant to LBR 9014-1(f)(2). Doc. #58.

Here, chapter 13 trustee Michael H. Meyer ("Trustee") has not provided written consent for this loan refinance. However, Debtor states that this loan will be used to pay-off the existing mortgage to Creditor in the amount of $80,104.41 and receive an estimated $65,735.16 in liquidity from the loan, which will be used to pay off 100% of the chapter 13 plan. Doc. #59, ¶¶ 6-8. The terms of the loan are as follows:

	Existing Loan	New Loan
Loan Amount:	$80,104.41	$150,500.00
Interest Rate:	4.125%	3.375%
Monthly Payment:	$747.31	$1,061.67

Doc. #60, Ex. A; *cf.* Ex. B. Debtor also includes an email from Trustee with an estimated pay-off amount of $9,946.93 to complete this chapter 13 case. *Id.*, Ex. D. This amount does not include trustee fees or any interest that may accrue but will pay 100% distribution to unsecured creditors. *See also* Plan, Doc. #38.

The plan appears to be current and not in default because there are no pending motions to dismiss, but the court will inquire at the hearing. Debtor has demonstrated an ability to pay all future plan payments, projected living expenses, and the new debt. Per amended Schedules I and J, Debtor has $3,105.00 in monthly disposable income with a mortgage payment of $731 per month. Doc. #41, Schedule J, ¶¶ 4, 23c. After refinancing this loan, Debtor's expenses will increase by $314.36, so she should still have $2,790.64 in remaining disposable income. Debtor's plan payment is $300.00 per month. Docs.

#38; #51. Additionally, Debtor states that the only security for the refinance will be Property. Doc. #59. The total monthly payment is less than $2,500.00. Doc. #60, Ex. B.

Opposition was not required and may be presented at the hearing. The court will inquire as to Trustee's position and whether plan payments are current.

After review of the attached evidence, and in the absence of opposition, this motion will be GRANTED. The court will find that Debtor is able to make the monthly payment for Property and pay off the chapter 13 plan in full. Debtor will be authorized, but *not required*, to incur further debt in order to refinance her home located at 2900 Tori Court in Atwater, CA for $150,000.00 at 3.375% interest with an estimated monthly payment of $1,061.67.

10. 20-13638-B-13 **IN RE: MIGUEL RODRIGUEZ-CISNEROS AND MARIA CEJA**
AMS-1

MOTION TO VALUE COLLATERAL OF FORD MOTOR CREDIT COMPANY
4-15-2021 [73]

MARIA CEJA/MV
ADELE SCHNEIDEREIT/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Miguel Rodriguez-Cisneros and Maria De Jesus Ceja ("Debtors") seek an order valuing a 2014 Ford F150 ("Vehicle"). This motion will be DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, 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) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

First, the declaration (Doc. #76) does not contain the Debtors' opinion of the relevant value. 11 U.S.C. § 506(a)(2) requires the valuation to be "replacement value," not "retail value," "Edmunds Retail Value," or "dealer's price." Other valuation standards are not specific enough. Also, Debtor is not an expert entitled to rely on hearsay evidence to opine on value. Fed. R. Evid. 701, 702

11 U.S.C. § 506(a)(2) states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

The declaration focuses on the method by which Debtors inputted information into Edmunds, which used an algorithm to generate a "retail value" for Vehicle. Doc. #76. Nowhere in the declaration do Debtors provide their opinion as to Vehicle's "replacement value" on the petition date. Debtors do discuss age and condition, which are relevant, but then conclude by stating Vehicle's "Edmunds Valuation," which is not the appropriate standard under § 506(a)(2).

Debtors have not established themselves as experts and cannot rely solely on Edmunds. *See* Fed. R. Evid. 702; *see also In re DaRosa*, 442 B.R. 172, 175 (Bankr. D. Mass 2010); *Young v. Camelot Homes, Inc. (In re Young)*, 390 B.R. 480, 493 (Bankr. D. Me. 2008) ("[B]ecause [the debtor] used Kelley trade-in listings as the starting point of his analysis, his opinion will not be taken as convincing evidence of replacement value.").

Debtors are competent to testify as to the replacement value of Vehicle as its owners. In the absence of contrary evidence, Debtors' opinion of replacement value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). But Debtors have not yet provided any evidence of replacement value. The court is looking for a declaration that unequivocally states Debtors' opinion as to Vehicle's **replacement value**.

Second, the certificate of service (Doc. #77) says that only the motion was served on the parties. LBR 9014-1(e)(1) requires service of all pleadings and documents filed in support of a motion to be made on or before the date they are filed with the court. LBR 9014-1(e)(2) requires the proof of service to identify the title of the pleadings and documents served. The certificate of service should list the motion, notice of hearing, declaration, and exhibit as having been served on all parties in interest.

For the above reasons, the motion will be DENIED WITHOUT PREJUDICE.

The court notes that this motion was an improvement over the last. Debtors corrected all of their other procedural defects from the previous attempt.

11. 21-11046-B-13 **IN RE: ROBERT/DARLENE AGUINAGA**
PBB-1

MOTION TO EXTEND AUTOMATIC STAY
4-30-2021 [8]

DARLENE AGUINAGA/MV
PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

Robert Aguinaga and Darlene Roxanne Aguinaga ("Debtors") seek an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3). Doc. #8.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period but was dismissed, then the automatic stay under subsection (a) of this section shall terminate with respect to the debtor on the 30th day after the filing of the latter case. Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-13924. That case was filed on September 16, 2019 and was dismissed on August 17, 2020 for failure to pay plan payments. This case was filed on April 26, 2021 and the automatic stay will expire on May 26, 2021, the date of this hearing. Doc. #1.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.' Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition." *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by *Taggart v. Lorenzen*, 139 S. Ct. 1785 (2019)).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed because Debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc).

Joint debtor Robert Aguinaga declares that the previous case was dismissed for failure to timely pay plan payments. Doc. #10, ¶ 5. After beginning loan modification discussions with their lender, Debtors stopped making plan payments to allow the case to be dismissed because they believed the modification would be approved. *Id.*, ¶ 6. The modification was not approved. The first priority

lender began foreclosure proceedings. Debtors refiled bankruptcy to prevent foreclosure proceedings. *Id.*, ¶ 7.

Additionally, Debtors included updated Schedules I and J, which reflect disposable income of $3,100.77 – enough to make the proposed plan payment of $3,100.00. Doc. #11, Ex. A; *cf.* Ex. B.

The court notes that Mr. Aguinaga's declaration is silent as to whether the bankruptcy case was filed in good faith, or whether Debtors intend to complete the plan and make plan payments. Doc. #10. It is questionable whether Debtors have presented clear and convincing evidence rebutting the presumption of bad faith imposed by § 362(c)(3)(C). This is a proposed 0% Plan case. It also appears the primary reason the case was filed was to prevent foreclosure of Debtors' residence.

This matter will be called as scheduled to inquire whether any parties oppose the relief requested.

If this motion is GRANTED, the automatic stay will be extended for all purposes as to all parties who received notice, unless terminated by further order of this court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2).

12. 20-13965-B-13 **IN RE: STEPHANIE FOREMAN**
DMG-2

MOTION TO COMPEL
4-26-2021 [39]

STEPHANIE FOREMAN/MV
D. GARDNER/ATTY. FOR DBT.

NO RULING.

This matter was filed on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

Stephanie Foreman ("Debtor") seeks an order compelling the Inyo County Sheriff's Office ("ICSO") to turn over exempt personal property in a safe deposit box subject to an involuntary collection action filed by Debtor's ex-husband, George Foreman. Doc. #39. Debtor states that she scheduled and exempted the property and has a confirmed plan, but ICSO will not release the property unless it receives a court order. *Id.*

Mr. Foreman filed a written response on May 17, 2021 requesting a continuance. Doc. #45. Under LBR 9014-1(f)(1), the deadline for written opposition was 14 days before the hearing, which May 12, 2021. Mr. Foreman's opposition is therefore untimely.

Additionally, there is no certificate of service. The letter does state that D. Max Gardner was sent a carbon copy of the letter via U.S. Mail, but no address is provided.

The letter is dated May 12, 2021. Mr. Foreman declares under penalty of perjury that he "just received the Motion to compel" and therefore was unable to obtain counsel to respond on such short notice. Mr. Foreman notes that he lives in Bishop, California, and states that there are no local bankruptcy attorneys. Mr. Foreman requests a continuance of at least 30 days to retain counsel.

13. 21-10580-B-13 **IN RE: KEVIN BROSMAN**
MHM-1

MOTION TO DISMISS CASE
4-15-2021 [16]

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DISMISSED 5/7/21

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Per the debtor's request, the chapter 13 case was dismissed on May 7, 2021. Doc. #21. Accordingly, this matter is moot and will be dropped from calendar.

14. 21-10681-B-13 **IN RE: TERRY JACOBS**
PBB-1

MOTION TO CONFIRM PLAN
4-8-2021 [17]

TERRY JACOBS/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 30, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1).

Terry LaVon Jacobs ("Debtor") seeks to confirm this first chapter 13 plan. Doc. #17.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to plan confirmation because: (1) Debtor will not be able to make all payments under the plan and comply with the plan as required by 11 U.S.C. § 1325(a)(6); (2) the plan fails to comply with other

applicable provisions in the bankruptcy code. Doc. #33. Trustee notes that the plan provides for payments of $1,600.00 for months 1-2 and $2,583.37 for months 3-60, but Schedules I and J show monthly net income of $1,684.00. Doc. #15; *cf.* #14.

The meeting of creditors has not concluded, and the continued meeting is scheduled for June 1, 2021. The meeting was continued because (a) Debtor is uncertain if he filed 2017 tax returns; (b) Debtor failed to disclose personal property on Schedules A/B; and (c) Debtor failed to disclose a claim for $9,600 in rent he is owed from a renter. Doc. #33.

U.S. Bank ("Creditor") also objected to confirmation as holder of a claim secured by property at 32012 Hartley Road, North Fork, CA 93643 ("Property"). Doc. #39. Creditor filed Proof of Claim No. 4 on May 5, 2021 in the amount of $170,846.72, including arrears of $42,201.20. Claim #4-1. Creditor contends that the plan is not feasible because the proposed plan payment for months 2-60 exceeds Debtor's monthly income and its success is premised on obtaining hypothetical future employment.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtor shall file and serve a written response not later than June 16, 2021. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtors' position. Trustee shall file and serve a reply, if any, by June 23, 2021.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than June 23, 2021. If Debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

15. 20-12288-B-13 **IN RE: FRANCISCO/MELISSA RAMIREZ**
SAH-7

CONTINUED MOTION TO MODIFY PLAN
3-4-2021 [85]

MELISSA RAMIREZ/MV
SUSAN HEMB/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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 matter was originally filed on 35 days' notice under Local Rule of Practice ("LBR") 3015-1(d)(2). The defaults of all nonresponding parties except the chapter 13 trustee were entered and the matter was continued. Docs. ##105-06.

Francisco R. Ramirez and Melissa Diane Ramirez ("Debtors") seek confirmation of their modified chapter 13 plan. Doc. #85. Debtors wish to extend the duration of their plan from 60 months to 77 months under 11 U.S.C. § 1329(d) and the COVID-19 Bankruptcy Relief Extension Act of 2021.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed. Doc. #95. Debtors replied agreeing to increase the payment and duration, still within the 84-month allowed timeframe under § 1329(d). Doc. #97.

After the matter was continued, Debtors and Trustee stipulated to resolve the objection in the order confirming the plan. Doc. #109. Based on the stipulation, the Trustee withdrew his objection. *Id.*

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

11:00 AM

1. 20-12036-B-7 **IN RE: SANDRA SANCHEZ**
21-1016

STATUS CONFERENCE RE: COMPLAINT
3-30-2021 [1]

SALVEN V. SANCHEZ ET AL
ANTHONY JOHNSTON/ATTY. FOR PL.

NO RULING.

2. 20-12037-B-7 **IN RE: GURDIAL SINGH**
21-1017

STATUS CONFERENCE RE: COMPLAINT
3-30-2021 [1]

SALVEN V. SINGH
ANTHONY JOHNSTON/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

3. 20-12037-B-7 **IN RE: GURDIAL SINGH**
21-1018

STATUS CONFERENCE RE: COMPLAINT
3-30-2021 [1]

SALVEN V. HANNON ET AL
ANTHONY JOHNSTON/ATTY. FOR PL.

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

DISPOSITION: Continued to June 16, 2021 at 11:00 a.m.

ORDER: The court will issue an order.

Chapter 7 trustee James E. Salven ("Plaintiff") filed a motion to approve a settlement agreement between Latino Law, Inc., and Mark J. Hannon (collectively "Defendants"), which is set for hearing on June 16, 2021. Doc. #15. The proposed settlement agreement will settle all claims between Plaintiff and Defendants. Doc. #14. Accordingly, this status conference will be continued to June 16, 2021 at 11:00 a.m. to be heard in connection with the motion to approve settlement agreement.

4. 18-11651-B-11 **IN RE: GREGORY TE VELDE**
20-1001

MOTION FOR SUMMARY JUDGMENT
3-15-2021 [24]

SUGARMAN V. CRAWFORD ET AL
DAVID JENKINS/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: Plaintiff to prepare order approved by defendant's counsel setting forth undisputed facts under Fed. R. Civ. Proc. 56 (g).

Defendants Janna Crawford individually and as trustee of her revocable trust, JACC Ranch, LLC, and JACC Limited Partnership (collectively "Crawford") ask for summary judgment against plaintiff Randy Sugarman, Trustee of the Estate of debtor Gregory J. teVelde ("Trustee") on Trustee's four claims for relief in this adversary proceeding. Trustee alleges Crawford received a fraudulent transfer of teVelde's interest in agricultural property in Tulare County, California on the eve of the bankruptcy.[1]

Crawford argues Trustee cannot recover under either actual or constructive fraudulent transfer theories under bankruptcy law (11 U.S.C. § 548 (a)(1) (A) or (B)) or state law made applicable under 11 U.S.C. § 544 (b) (1) (Cal. Civ. Code §'s 3439.04 and 3439.05). Recovery is unavailable, Crawford claims, because the interest she acquired could not have been from teVelde - his rights to the property expired before she acquired the real property and teVelde filed the bankruptcy case. No right means no transfer under any theory, says Crawford.

Trustee opposes urging the existence of material facts whether teVelde's rights expired before the transaction. The evidence suggests the expiration of teVelde's rights was extended, expressly or impliedly, claims Trustee, when Crawford decided to purchase the property from the seller, Gloria Bowman, or her successor. These facts defeat summary judgment, contends Trustee.

Construing the evidence in favor of the non-moving party, as we must, there are material disputed facts which preclude summary judgment. The court DENIES the motion.

Background

For this motion, very few facts are in dispute.

[1] Trustee claims that after the alleged voidable transfer, Crawford received property worth $11 million for a cash investment of $4.8 million. Values are not at issue on this motion.

TeVelde leased 625 acres of row crop land in Tulare County from Gloria Bowman or her residual trust for five years beginning May 1, 2013. Doc. #31, ¶¶ 1-2. The written lease contained an option for teVelde to purchase the acreage for $ 6 million. *Id.*, ¶¶ 3-8. TeVelde paid the option consideration, $600,000.00 to be credited against the purchase price. *Id.*, ¶ 4. The option could be exercised between January 1, 2017 and April 30, 2017. To exercise the option, teVelde had to: provide written notice; pay another $600,000.00 for purchase consideration – credited to the purchase price; open an escrow; and close the escrow before the end of the lease term. *Id.*, ¶¶ 5, 9-13.

The lease was amended twice. The second amendment, signed by teVelde and Bowman, dated April 20, 2017 acknowledged both teVelde's payment of the second $600,000.00 purchase consideration, and that teVelde had exercised the option.[2] *Id.*, ¶ 14. This amendment also changed the date by which escrow had to close from the lease's termination, April 30, 2018, to March 16, 2018.[3] *Id.*, ¶ 15.

While the lease was effective, teVelde farmed the property with his son, Carson. Janna Crawford is Carson's mother. She and teVelde have been divorced since about 2002 and seldom, if ever, communicate.

Failing to obtain the financing for the purchase price, teVelde suggested Carson approach his mother about buying the property. *Id.*, ¶ 20. March 16, 2018 came and went and teVelde had neither opened an escrow nor completed the purchase of the property. *Id.*, ¶ 18. Carson approached his mother. Sometime after March 16, 2018 she spoke with Marc Schuil, a real estate broker about the property. *Id.*, ¶ 25.

Janna Crawford decided to buy the property. *Id.*, ¶ 27. Schuil, who had worked with teVelde before, contacted counsel for the seller, Mike Noland, Esq., a few days after March 16, 2018. Schuil asked if Bowman preferred a particular title company to handle an escrow that teVelde and Carson wanted to open for the purchase of the Bowman property. Mr. Noland responded the next day saying Tracy Keavy[4] would not object to teVelde assigning purchase rights to his ex-wife but teVelde would not be relieved from his obligations under the lease. The "link" between the escrow sought by teVelde and his son and the assignment of teVelde's rights to Bowman is not explained.

The title company prepared the assignment of both the lease and the escrow instructions (presumably prepared) to Janna Crawford. The assignment was signed by Bowman and teVelde. *Id.*, ¶ 27. Also, teVelde signed a Quit Claim Deed to JACC Ranch LLC. Janna Crawford transferred her interest to JACC Ranch LLC and then from JACC Ranch, LLC to JACC, Limited Partnership. *Id.*, ¶ 28. Crawford's purchase involved credit for the $1.2 million teVelde had already paid to Bowman plus roughly $4.8 million in cash that Crawford deposited

[2] Also, teVelde signed an "Option Exercise Notice" dated April 20, 2006 which makes no sense since the lease itself is dated some seven years later. Presumably, this is a scrivener's error.
[3] The first amendment involved nothing germane to this motion.
[4] Though the reasons are unclear from the record, Ms. Bowman apparently had Ms. Peavy handle her affairs.

into escrow. *Id.*, ¶ 29. No new sales documents between the parties were prepared.

A Grant Deed from Bowman to JACC Ranch LLC was recorded April 25, 2018.[5] *Id.*, ¶ 30. This Chapter 11 case was filed one day later. *Id.*, ¶ 31. Sugarman was the Chapter 11 Trustee and is the Trustee/Liquidating Agent under the confirmed Chapter 11 Plan. There is no dispute as to his standing to bring the action.

Discussion

I

In adversary proceedings before the bankruptcy court, the familiar summary judgment standard in Fed. R. Civ. Proc. 56 applies. Fed. R. Bankr. Proc. 7056; *Barboza v. New Form, Inc. (In re Barboza),* 545 F. 3d 702, 707 (9th Cir. 2008). The moving party must support its position by evidence from the record showing the materials do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact. Civ. Rule 56 (c). An issue is "genuine" only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute is "material" only if it could affect the outcome of the suit under the governing law. *Barboza*, 545 F. 3d at 707.

The court must view all the evidence in a summary judgment motion in the light most favorable to the nonmoving party. *Id.* citing *County of Tuolumne v. Sonora Cmty. Hosp.,* 236 F. 3d 1148, 1154 (9th Cir. 2001). A court generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented. *Barboza*, 545 F. 3d at 707 quoting *Agosto v. INS*, 436 U.S. 748, 756 (1978). "At the summary judgment stage, the judge's function is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

II

Crawford contends that even under the broad definition of "transfer" under both the Bankruptcy Code and California's fraudulent conveyance statutes (11 U.S.C. § 101 (54) and 548 (a) and Cal. Civ. Code 3439.01 (m) respectively) the absence of a property interest precludes a transfer. So, if teVelde had no interest in property after March 16, 2018, he could not have "transferred" anything of value to Crawford.

This necessitates a brief discussion of the legal status of the Bowman, teVelde, Crawford transaction.

A.

An option is an irrevocable offer. *Simons v. Young*, 93 Cal. App. 3d 170, 10 (1979). Like an offer, an option may be accepted or

[5] The grantor is Gloria Jean Bowman, Trustee of the Bowman Residual Trust.

exercised only in strict compliance with its terms, and the optionor can prescribe any mode of acceptance she pleases. 1 Corbin on Contracts § 264 (1963). An optionee buys a right, and with that right, the optionee has the burden to "make sufficient tender or offer of performance and to make this to the [optionor] within the time named." *Bourdieu v. Baker*, 6 Cal. App. 2d 150, 161 (1935). "An option contract relating to a sale of land is . . .not a sale of the property but is a sale of the right to purchase." *Beran v. Harris*, 91 Cal. App. 2d 562, 564 (1949). Under California law, failure to strictly comply with the option terms may be excused only if there is a waiver by the optionor or evidence of conduct which might estop the optionor from insisting on strict compliance with the option. See, *Riverside Fence Co. v. Novak*, 273 Cal. App. 2d 656 (1969).

In contrast, once the option is exercised, then a binding bilateral contract is in place which may become the subject of a suit for specific performance, if performance by either party is thereafter refused. *Palo Alto Town & Country Village, Inc. v. BBTC Co.,* 11 Cal. 3d 494, 503 (1974); *Auslen v. Johnson,* 118 Cal. App. 2d 319, 321 (1953). Where an option to purchase exists within a lease agreement, the exercise of the option to purchase causes the lease and its incorporated option agreement to cease to exist, and instead, "a binding contract of purchase and sale comes into existence between the parties. [Citations.]" *Petrolink, Inc. v. Lantel Enterprises*, 21 Cal. App. 5th 375, 384 (2018) quoting *Peebler v. Seawell*, 122 Cal. App. 2d 503,506 (1954).

B.

About a year before teVelde filed chapter 11, he and Bowman agreed in the second lease amendment that teVelde had exercised the option. TeVelde also signed an "Option Exercise Notice."[6] The parties acknowledged teVelde's second $600,000 payment. Viewing the evidence in Trustee's favor, the option ripened into a bilateral contract requiring teVelde to close escrow by March 16, 2018. He did not.

III

The transformation of the option into a bilateral contract is significant for this motion since the strict compliance required of an optionee is no longer germane. Is there evidence to raise a genuine material fact whether Bowman or her successor as seller enforced the escrow closing date condition? There is.

A.

California courts generally *do* strictly enforce time deadlines in real estate sales contracts, permitting the seller to cancel after the time specified where time is specifically made of the essence *unless* there has been a waiver or potential forfeiture. *Galdje v. Darwish*, 113 Cal. App. 4th 1331, 1341 (2003) (*emphasis in original*) (affirming waiver finding based on parties' communications and

[6] But as mentioned before, the date of the "Option Exercise Notice" is inconsistent with the timing of the transaction.

seller's delay in cancelling escrow until after tender of loan approval letter).

Whether there has been a waiver is a question of fact to be determined considering all the evidence. *Brookview Condominium Owners Ass'n v. Heltzer Enterprises-Brookview*, 218 Cal. App. 3d 502, 513 (1990); *L.K. Comstock & Co. v. United Engineers & Constructors Inc.*, 880 F. 2d 219, 220 (9th Cir. 1989) (*quotations and citations omitted*).

The evidence here when construed as required on a summary judgment motion raises a factual issue whether Bowman or her successor waived strict compliance with the escrow closing date.

B.

First, missing from the record is any affirmative cancellation of the teVelde-Bowman transaction by Bowman. Nor is there any evidence that Bowman's election to cancel, if she elected, was communicated to anyone.

Second, though Crawford, Schuil, and Carson teVelde testified that the option expired, there no communication from the optionor establishing the fact. Even if such evidence exists, that will not necessarily result in granting the motion. *See*, *Simons*, 93 Cal. App. 3d at 178-79 (no waiver found on the facts but acknowledging that "in an appropriate case" a lessor's waiver of a time condition may be found on a renewal option]; *Leonhardi-Smith, Inc. v. Cameron*, 108 Cal. App. 3d 42 (1980) (affirming finding that lessor's knowledge of lessee's desire to renew and other actions supported a waiver of timely exercise of an option).

Third, based on the parties' actions when the second amendment to the lease was signed, the timeliness condition for escrow closing may have been waived. The second amendment was signed before the expiration of the period for the exercise of the option under the original lease. This suggests the parties did comply with deadlines. The lack of evidence of Bowman's communication with teVelde as the termination date approached or after suggests a knowing waiver.

Fourth, the absence of Bowman's intention to enforce the escrow closing date condition is evidenced by at least four facts:

1. No new documents were drafted for the Bowman-Crawford transaction.
2. Crawford received the benefit of $1.2 million paid by teVelde as a credit against the purchase price.
3. The Assignment of teVelde's Interest stated that Crawford agreed to be bound by the terms of the lease and the escrow instructions.
4. Bowman's or her successors' agent, Attorney Noland, communicated his client's willingness to let Crawford be the assignee of teVelde's rights under the contract after the

March 16, 2018 deadline.[7] This is inconsistent with enforcing the escrow closing date.

Fifth, the proximity of the actual closing date to the March 16 deadline evidences all parties' willingness to postpone the closing. April 25 – the closing date – and March 16 - are only forty days apart. There is no evidence that Bowman or her successor terminated the teVelde/Bowman agreement. Instead, the evidence suggests the opposite. In fact, Attorney Noland stated Bowman's successor expected teVelde to otherwise perform under the lease.

This evidence when viewed in the light most favorable to Trustee supports the existence of a genuine material factual issue whether Bowman waived or enforced the deadline. On this motion (unlike a trial) the court does not weigh the evidence or determine the truth of the matter, but only determines whether there is a genuine issue for trial. *Balint v. Carson City*, 180 F. 3d 1047, 1054 (9th Cir. 1999).

C.

The record here distinguishes the authority Crawford cites on this issue. *Sullivan v. Willock (In re Wey)*, 854 F. 2d 196, 199, 200 (7th Cir. 1988) (affirming bankruptcy court finding of no transfer when debtor forfeited purchase deposit after failing to fund balance of purchase price, but no waiver issue raised),[8] *Edgewater Med. Ctr. V. Edgewater Prop. Co. (In re Edgewater Med. Ctr)*, 373 B.R. 845 (Bankr. N.D. Ill. 2007) (finding expiration of the option resulted in the right "simply disappear[ing]" not a transfer; but finding optionor's controlling person manipulated optionee's exercise of the option breaching the "good faith and fair dealing" covenant supporting specific performance of the option), *Los Angeles Unified School Dist. V. Torres Construction Corp.*, 57 Cal. App. 5th 480, 504 (2020) (affirming lack of waiver of a public work "job order" construction contract provision allowing post-construction audit for pricing conformity).

This record contains evidence establishing genuine material factual issues concerning Bowman's enforcement of the contract deadlines. Summary judgment is inappropriate.

IV

That said, Civ. Rule 56 (g) (Rule 7056) permits a court to enter an order "stating any material fact. . . that is not genuinely in dispute and treating the fact as established in the case." The primary purpose of the rule is to salvage some results from the effort involved in the denial of the motion for summary judgment. *McCollough v. Johnson, Rodenberg & Lauinger*, 587 F. Supp. 2d 1170, 1177 (D. Mont. 2008) (applying the precursor to Civ. Rule 56 (g)).

[7] The court is cognizant of Crawford's objection to admission of this evidence on hearsay and other grounds. The court's evidentiary rulings are elsewhere in the record.

[8] The court could not find an example of *Wey* being cited in the ninth circuit.

The parties listed numerous facts which are undisputed in their separate statements filed in support of and opposition to the motion. The court will enter an appropriate order prepared by Trustee's counsel and approved as to form by Crawford's counsel setting forth those facts the parties agree are undisputed and can be established in this case.

The motion will be DENIED.

The court rules on Defendant's objections to evidence as follows:

Rulings on Defendant's Objections to the Evidence Submitted by Plaintiff in Support of Opposition to Defendant's Motion for Summary Judgment

1.	Personal Knowledge:	Overruled. Produced in response to subpoena. No dispute Mr. Noland was Bowman's counsel.
	Hearsay:	Overruled, if offered to prove terms. Otherwise, sustained.
2.	Personal Knowledge:	Overruled.
	Hearsay:	Overruled.
	Authentication:	Overruled. Schuil declaration says Mr. Noland was counsel for Bowman and the documents were responsive to a subpoena. Schuil also testified he was contacted by defendant.
3.	Personal Knowledge:	Overruled.
	Hearsay:	Overruled.
4.	Personal Knowledge:	Overruled.
	Hearsay:	Overruled.
	Authentication:	Overruled. Document was part of defendant's evidence.
5.	Personal Knowledge:	Overruled. Paragraph 5 of the declaration authenticates, and Ms. Crawford testified to the fact.
	Hearsay:	Overruled. This is non-hearsay.
6.	Personal Knowledge:	Overruled.
	Hearsay:	Overruled.
	Authentication:	Overruled.
7.	Personal Knowledge:	Overruled.
	Hearsay:	Overruled.
8.	Personal Knowledge:	Overruled.
	Hearsay:	Overruled.
	Authentication:	Overruled. Further authentication is not required. FRE 901(a). Ms. Crawford testified to the facts.

9. Personal Knowledge: Overruled.
Hearsay: Overruled.
Authentication: Overruled.

10. Personal Knowledge: Sustained.
Hearsay: Sustained.
Improper Opinion: Sustained
Relevance: Sustained.

11. All objections: Sustained.

Rulings on Defendant's Objections to Plaintiff's statement of Additional Facts Precluding Summary Judgment

1. All objections: Overruled.

2. All objections: Sustained.

5. 20-11657-B-7 **IN RE: MARICEL/CHRISTOPHER LOCKE**
21-1013

STATUS CONFERENCE RE: COMPLAINT
3-19-2021 [1]

LOCKE ET AL V. ZAVALA
MARICEL LOCKE/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

6. 20-11657-B-7 **IN RE: MARICEL/CHRISTOPHER LOCKE**
21-1014

STATUS CONFERENCE RE: COMPLAINT
3-19-2021 [1]

LOCKE ET AL V. GUILLERMO
MARICEL LOCKE/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

7. 19-13374-B-7 **IN RE: KENNETH HUDSON**
19-1128 GEG-2

MOTION FOR SUMMARY JUDGMENT
4-7-2021 [108]

BROWN V. HUDSON
GLEN GATES/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.