

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, June 8, 2022
Place: Department B - 510 19th Street
Bakersfield, California

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

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

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

1. [19-10802](#)-B-13 IN RE: STEVE/SHELLY BIERER
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-11-2022 [[61](#)]

WELLS FARGO BANK, N.A./MV
D. GARDNER/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 6, 2022 at 9:00 a.m.

NO ORDER REQUIRED.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property commonly known as 382 Chimney Canyon Road, Lebec, CA 93225 ("Property"). Doc. #61. Movant also requests attorneys' fees and waiver of the 14-day stay under Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3).

Steve Bierer and Shelly Ann Bierer ("Debtors") timely responded and filed a *Statement of Disputed Material Facts*. Docs. ##67-68.

Movant replied. Doc. #71.

On June 6, 2022, the parties stipulated to continue this motion to July 6, 2022 to allow for additional time to discuss a resolution. Doc. #75. The stipulation will be approved after the parties properly submit a proposed order approving the stipulation with a copy of the stipulation attached as an exhibit.

Accordingly, this motion will be CONTINUED to July 6, 2022 at 9:00 a.m.

2. [20-11914](#)-B-13 **IN RE: ROSA GODOY**
[RSW-5](#)

CONTINUED MOTION TO MODIFY PLAN
3-29-2022 [[82](#)]

ROSA GODOY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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.

This motion was originally set for May 4, 2022 and continued to June 8, 2022. Docs. #92-93.

Rosa Elena Huezo Godoy ("Debtor") sought an order confirming the *Third Modified Chapter 13 Plan* dated March 29, 2022 ("Third Plan"). Doc. #82. The Third Plan proposes that Debtor shall pay a total of \$10,008.00 through March 2022; beginning April 2022, Debtor shall make monthly payments of \$925.00 through the remainder of the 60-month plan. Doc. #86. The Third Plan contemplates a 0% dividend to allowed non-priority, unsecured claims. *Id.*

In contrast to the operative *First Modified Chapter 13 Plan* dated July 12, 2021 ("First Plan"), the plan term is being reduced from 84 months under the COVID-19 Bankruptcy Relief Extension Act of 2021 ("CBREA") to 60 months, with a payment of \$8,508.00 through July 2021, and then monthly payments of \$750.00 through the remainder of the plan. Doc. #47. The First Plan also provides for a 0% dividend to allowed, non-priority unsecured claims. *Id.*

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the Third Plan and comply with the Third Plan, and § 1325(a)(3) and (a)(7) because the Third Plan has not been proposed in good faith and/or the action of the Debtor in filing the petition was in bad faith. Doc. #90.

First, Trustee noted that Debtor is seeking to decrease the plan term from 84 months to 60 months while increasing the monthly plan payment. With such reduction, Debtor would have 40 months remaining in the Third Plan. However, the Third Plan as proposed will take 53 months to fund, with 51 months needed to pay off the remaining Class 1 arrears. *Id.*

Second, Trustee did not claim that the Third Plan had been filed in bad faith, but instead questioned whether the Third Plan had been filed in good faith. *Id.* Trustee said that Debtor has not made any payments since September 2021. Further, Debtor's declaration (Doc. #84) failed to address why Debtor has not been able to make monthly plan payments. *Id.* Debtor did say that she has not paid arrears because she has been waiting on a tax refund from the IRS. However, such a tax refund is not a guaranteed source of income, only comes one time per year, and is insufficient to fund a chapter 13 plan. Additionally, Debtor indicated that her daughter has been financially assisting Debtor with \$910.00 per month, so Trustee questioned why payments have not been made if Debtor's daughter has been continuing to provide financial assistance. *Id.*

The court continued this matter so that Debtor could file and serve a written response not later than May 25, 2022, or a modified plan in lieu of a response not later than June 1, 2022, or Trustee's objection would be sustained, and the motion denied, on the grounds stated in the opposition without further hearing. Docs. ##92-93.

Debtor neither filed a written response by May 25, 2022, nor a modified plan by June 1, 2022, which warrants denial of this motion. On June 2, 2022, Debtor filed a supplemental declaration, but it was not timely. Doc. #95. Then, on June 3, 2022, Debtor filed an untimely response. Doc. #97. The response concedes that the payment was miscalculated and agrees to increase the payment to \$1,021.00. *Id.*

Debtor declares that the first plan modification under CBREA occurred because she fell behind on payments while her and her family were sick with COVID-19 from May to June 2021, and Debtor had to pay for doctor visits and medications. Doc. #95. The second modification was the result of major family issues related to Debtor's granddaughter. Debtor and her daughter both became ill while caring for the granddaughter, which required travel to Tijuana, Mexico for doctor visits and incurring additional expenses between October 15 and November 11, 2021. *Id.*

Most recently, Debtor was unable to make payments between October 2021 and March 2022 because she was paying to send her granddaughter to a rehabilitation facility. Debtor's granddaughter passed away April 4, 2022. *Id.*

Notwithstanding these difficulties, Debtor declares that the April and May 2022 payments have been paid. *Id.* Debtor believes she can afford the \$1,021.00 plan payment because she receives \$879.00 from Social Security and her daughter is supplementing her income with \$910.00 per month, and willing and able to help pay expenses.

Though Debtor appears to have resolved Trustee's objections, Debtor failed to timely respond by the May 25, 2022 deadline. This warrants the striking of Debtor's untimely response and declaration, sustaining Trustee's objection, and denying this motion.

This matter will be called and proceed as scheduled. Unless Trustee's objection is withdrawn, the court is inclined to SUSTAIN Trustee's objection and DENY WITHOUT PREJUDICE this motion for the reasons indicated in the opposition.

3. [22-10323](#)-B-13 **IN RE: DONALD/PAULA ROBINSON**
[KSR-1](#)

FURTHER SCHEDULING CONFERENCE RE: OBJECTION TO CONFIRMATION
OF PLAN BY RANDALL GRIGG AND ANGENE GRIGG
4-12-2022 [[15](#)]

ANGENE GRIGG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
KIRK RIMMER/ATTY. FOR MV.

NO RULING.

At the May 4, 2022 hearing, this objection was overruled in part as to understating the amount owing under the note. Doc. #23. The court continued the hearing for further scheduling to determine the appropriate interest rate in accordance with *Till v. SCS Credit Corp.*, 124 U.S. 465, 471 (2004). Doc. #22. Since then, nothing new has been filed. This matter will be called and proceed as scheduled.

4. [18-11141](#)-B-13 **IN RE: ELENA HARPER**
[DWE-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
11-18-2021 [[102](#)]

FREEDOM MORTGAGE
CORPORATION/MV
NICHOLAS WAJDA/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This matter was originally heard on January 5, 2022, continued to March 2, 2022, continued again to May 4, 2022, and further continued to June 8, 2022 so that Debtor could either file a modified plan or a motion to incur additional debt. Docs. #117; #121.

Freedom Mortgage Corporation ("Movant") sought relief from the automatic stay under 11 U.S.C. § 362(d)(1) for cause with respect to real property located at 3017 McCall Avenue, Bakersfield, CA 93304 ("Property"). Doc. #102. Movant claimed that Debtor had a post-petition delinquency of \$5,745.22, consisting of six payments of \$974.84 from June 2021 to November 2021. Doc. #104. Movant also sought waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3).

Chapter 13 trustee Michael H. Meyer ("Trustee") timely responded, indicating that no payments were made during the April to August 2021 forbearance period, but Trustee resumed making payments November 1, 2021, and has paid a total of \$24,053.25. Doc. #117. Trustee also represented that the delinquency could be cured by filing a modified plan. *Id.*

Elena Janel Harper ("Debtor") timely responded, contending that Debtor will soon file an amended plan to resolve the arrearage balance, or alternatively, will file a motion to incur additional debt to refinance the loan. Doc. #114. Debtor also objected to waiver of the 14-day stay under Rule 4001(a)(3).

At the January 5, 2022 hearing, the court determined that a bona fide dispute existed as to the amount owed for post-petition mortgage payments. Doc. #117. The court continued the motion to March 2, 2022 and, for good cause, ordered the automatic stay continued in effect under 11 U.S.C. § 362(e)(2)(B) pending resolution of the final hearing on this motion. Movant was ordered to file and serve any additional evidence or briefing by February 16, 2022. Doc. #118. Replies by Trustee and Debtor, if any, were to be filed and served not later than February 23, 2022. No additional briefing was filed.

At the March 2, 2022 hearing, the parties agreed to continue the motion to May 4, 2022. Doc. #121. The automatic stay was continued in effect under 11 U.S.C. § 362(e)(2)(B)(i) by agreement of all parties in interest. Doc. #123.

At the May 4, 2022 hearing, the parties again agreed to continue the motion to June 8, 2022. Doc. #127. The automatic stay was continued in effect under 11 U.S.C. § 362(e)(2)(B)(i) by agreement of all parties in interest. If the delinquency is satisfied, Movant would withdraw the motion. The court continued the automatic stay since all parties agreed to the continuance.

Since the last hearing, no party has filed any additional opposition, argument, or evidence. This matter will be called as scheduled. It appears there is a post-petition delinquency. The Trustee sent a *Notice of Default and Intent to Dismiss* in March and the record does not include the response to the notice. Doc. #125. Also, no modified plan or motion to authorize refinance as previously represented by the debtor. The court is inclined to GRANT the motion.

5. [20-12848](#)-B-13 **IN RE: PATRICK/MARIBETH TABAJUNDA**
[RSW-6](#)

CONTINUED MOTION TO MODIFY PLAN
3-21-2022 [[130](#)]

MARIBETH TABAJUNDA/MV
ROBERT WILLIAMS/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.

Patrick B. Tabajunda and Maribeth E. Tabajunda ("Debtors") seek an order confirming the *Third Modified Chapter 13 Plan* dated March 21, 2022. Doc. #130.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation under 11 U.S.C. § 1325(a)(3) because the unsecured repayment percentage is reduced significantly from 78.178% to 9% and Debtors have failed to produce evidence that the modification has been proposed in good faith. Doc. #138.

The court continued this matter so that Debtors could file and serve a written response not later than May 25, 2022, or a modified plan in lieu of a response not later than June 1, 2022, or Trustee's objection would be sustained, and the motion denied, on the grounds stated in the opposition without further hearing. Docs. ##141-42.

Debtors neither filed a written response by May 25, 2022, nor a modified plan by June 1, 2022. Accordingly, Trustee's objection will be SUSTAINED for the reasons stated in the objection and the minutes, and the motion will be DENIED WITHOUT PREJUDICE.

6. [21-12355](#)-B-13 **IN RE: MONICA RAMOS**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
2-11-2022 [\[45\]](#)

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

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

This motion was originally set on April 6, 2022, continued to May 4, 2022, and further continued to June 8, 2022. Docs. #60; #62.

Chapter 13 trustee Michael H. Meyer ("Trustee") asked the court to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and § 1307(c)(4) for failure to commence making timely payments due under the plan. Doc. #45. Trustee declared that Debtor has failed to make all required payments due under the plan. Doc. #47. Payments were delinquent in the amount of \$5,000.00 through February 11, 2022, with four additional payments of \$2,500.00 due February 25, March 25, April 25, and May 25, 2022, for a total delinquency of \$15,000.00.

Monica Marcella Ramos ("Debtor") timely responded. Doc. #52. Debtor was unable to become current and intended to file a motion to modify plan. On this basis, Debtor asked the court to deny the motion. *Id.*

Debtor's First Modified Plan dated March 29, 2022 ("Plan") was set for hearing on May 4, 2022 and continued to June 8, 2022 in matter #7 below. RSW-2. Trustee objected to plan confirmation in that matter and supplemented that opposition on May 12, 2022. Docs. #64; #73. The court intends to sustain Trustee's objection and deny the motion to confirm plan because Debtor did not timely reply. Since the curing of the plan default was contingent upon the motion to confirm plan, Debtor remains delinquent. Accordingly, this motion to dismiss will be GRANTED.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(4) for failing to commence making plan payments.

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors. Debtor is delinquent in the amount of \$5,000.00 with four additional payments totaling \$10,000.00 due before this hearing, for a total of \$15,000.00. Doc. #47.

Since the last hearing, Trustee filed supplemental opposition to Debtor's motion to confirm plan in matter #7 below. Doc. #73. Trustee's office received an email from Mary French, the Vice President and Assistant General Counsel for secured creditor Mother Lode Holding Company, Placer Title Company. Doc. #74. Trustee's office learned that Debtor, under the name Monica Dominguez, filed a lawsuit in Kern County Superior Court against Placer Title Company on or about May 24, 2021. See Doc. #75, *Ex. A*. The lawsuit alleges breach of fiduciary duty and other damages with respect to Debtor's real property at 2201 Verdugo Lane, Bakersfield, CA ("Property"). *Id.*, *Ex. B*. Debtor claims that she paid off the deed of trust in the amount of \$200,000 owing to Efrain Bobadillo, and that Mr. Bobadillo and Placer Title Company have failed to reconvey the deed to Debtor. *Id.*

The lawsuit was filed approximately five months before the bankruptcy was filed, but neither the lawsuit nor any claims against Mr. Bobadillo nor Placer Title Company were disclosed in the petition. However, *Schedule D* lists Mr. Bobadillo as the holder of the first deed of trust encumbering Property, and *Schedule J* indicates that Debtor pays \$1,100 per month for a mortgage. Doc. #1. Meanwhile, the *Statement of Financial Affairs* says that Debtor was making monthly payments of \$1,030 in the 90 days prior to filing. As result, Trustee supplemented his objection to confirmation with two additional counts. Doc. #73.

First, based on Debtor's claims in the lawsuit that the deed of trust has been paid off, Trustee believes that Debtor's representations that Debtor pays between \$1,030 to \$1,100 per month for a mortgage payment is false, so Debtor has greater monthly income than is stated in the schedules. *Id.*

Second, Trustee contends that the plan was not proposed in good faith as required by § 1325(a)(3), and/or that Debtor filed the petition in bad faith in violation of § 1325(a)(7). *Id.* Debtor did not disclose the claims against Placer Title Company and Mr. Bobadilla in the schedules or at the meeting of creditors. Debtor's proposed plan provides for a 0% dividend to allowed non-priority, unsecured claims. If Debtor has not been paying the mortgage payment as Trustee suspects, then she actually would have an addition \$1,030 to \$1,100 per month that could have been used to pay unsecured creditors. The court will issue an *Order to Show Cause* ("OSC").

In addition to the delinquency described above, Trustee has reviewed the schedules and determined that there are no non-exempt, unencumbered assets that could be liquidated for the benefit of unsecured claims if the case were converted to chapter 7. Doc. #45. Debtor's schedules indicate that Debtor's real property and vehicles

are over encumbered, and the remaining assets are exempted entirely. Thus, dismissal, rather than conversion, serves the interests of creditors and the estate.

As noted above, Debtor filed a modified plan in matter #7 below, which prompted the continuation of this objection. The court intends to deny that motion. A reorganization is no longer in prospect, the operative plan is delinquent at least \$15,000.00, and Debtor has not presented any evidence demonstrating that this case should not be dismissed. The court will GRANT this motion for unreasonable delay by the Debtor that is prejudicial to creditors and for failure timely make plan payments due under the plan.

Based on Trustee's supplemental opposition to plan confirmation, the court will also issue an OSC why the court should not enjoin Debtor from filing, or causing to be filed, any subsequent petition for relief under the Bankruptcy Code in this district for a period of two years without first obtaining written permission from the Chief Bankruptcy Judge of the Eastern District of California. The court will retain jurisdiction to determine the outcome of the OSC.

7. [21-12355](#)-B-13 **IN RE: MONICA RAMOS**
[RSW-2](#)

CONTINUED MOTION TO CONFIRM PLAN
3-29-2022 [[54](#)]

MONICA RAMOS/MV
ROBERT WILLIAMS/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.

This motion was originally set for May 4, 2022 and continued to June 8, 2022. Doc. #67.

Monica Marcella Ramos ("Debtor") sought an order confirming the *First Modified Plan* dated March 29, 2022 ("Plan"). Doc. #54.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #64. Trustee objected on grounds of feasibility because Debtors' current *Schedules I and J* indicate that Debtor's net monthly income is \$2,537.49 per month, which is insufficient to fund the \$2,755.00 plan payment. *Id.*; *cf.* Doc. #1, *Sched. J*, ¶ 23c.

The court continued this matter so that Debtor could file and serve a written response not later than May 25, 2022, or a modified plan in lieu of a response not later than June 1, 2022, or Trustee's objection would be sustained, and the motion denied, on the grounds stated in the opposition without further hearing. Docs. #67; #70.

Since then, Debtor neither responded nor filed a modified plan. Trustee filed supplemental opposition on May 12, 2022. Doc. #73. On May 10, 2022, Trustee received an email from Mary French, the Vice President and Assistant General Counsel for Mother Lode Holding Company, Placer Title Company. Doc. #74. The email informed Trustee's office that Debtor, under the name Monica Dominguez, filed a lawsuit in Kern County Superior Court against Placer Title Company on or about May 24, 2021. See Doc. #75, *Ex. A*. The lawsuit alleges breach of fiduciary duty and other damages with respect to Debtor's real property at 2201 Verdugo Lane, Bakersfield, CA ("Property"). *Id.*, *Ex. B*. Debtor claims that she paid off the deed of trust in the amount of \$200,000 owing to Efrain Bobadillo, and that Mr. Bobadillo and Placer Title Company have failed to reconvey the deed to Debtor. *Id.*

The lawsuit was filed approximately five months before this bankruptcy, but neither the lawsuit nor any claims against Mr. Bobadillo nor Placer Title Company were disclosed in the petition. However, *Schedule D* lists Mr. Bobadillo as the holder of the first deed of trust encumbering Property, and *Schedule J* indicates that Debtor pays \$1,100 per month for a mortgage. Doc. #1. Meanwhile, the *Statement of Financial Affairs* says that Debtor was making monthly payments of \$1,030 in the 90 days prior to filing. *Id.* And the Plan says that Debtor is paying Bobadilla Efrain \$1,030.00 per month as a Class 4 creditor. Doc. #58. Due to this development, Trustee supplemented his objection with two additional counts. Doc. #73.

In addition to the first objection on feasibility under § 1325(a)(6), Trustee secondarily objects because the Plan fails to provide for submission of all or such portion of Debtor's future income or other earnings to the supervision and control of the Trustee as is necessary to execute the Plan in violation of § 1322(a). *Id.* Based on Debtor's claims in the lawsuit that the deed of trust has been paid off, Trustee believes that Debtor's representations that Debtor pays between \$1,030 to \$1,100 per month for a mortgage payment is false, so Debtor has greater monthly income than is stated in the schedules. *Id.*

Third, Trustee contends that the Plan has not been proposed in good faith as required by § 1325(a)(3), and/or that Debtor filed the petition in bad faith in violation of § 1325(a)(7). *Id.* Debtor did not disclose the claims against Placer Title Company and Mr. Bobadilla in the schedules or at the meeting of creditors. Trustee does not contend that Debtor cannot demonstrate good faith, only that there is insufficient evidence to establish Debtor's good faith in light of the non-disclosure.

Debtor neither filed a written response to Trustee's original objection by May 25, 2022, nor a modified plan by June 1, 2022. Accordingly, Trustee's objection will be SUSTAINED for the reasons stated in the original objection and the minutes, and the motion will be DENIED WITHOUT PREJUDICE.

8. [22-10569](#)-B-13 **IN RE: SUMAIRA RAHMAN**
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MTGLQ INVESTORS, LP
5-24-2022 [[27](#)]

MTGLQ INVESTORS, LP/MV
JENNIFER WONG/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to August 3, 2022 at 9:00 a.m.

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

MTGLQ Investors, LP, its assignees and/or successors, by and through its servicing agent Rushmore Loan Management Services, LLC ("Creditors") objects to the *Chapter 13 Plan* dated April 15, 2022 ("Plan") of *pro se* debtor Sumaira Rahman ("Debtor") because the Plan does not provide for full payment of the arrears owed on account of a promissory note secured by a deed of trust on real property located at 1897 Ribera Drive, Oxnard, CA 93030 ("Property"), and the Plan is not feasible. Doc. #27.

Though not required, Debtor filed opposition. Doc. #35.

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

As a preliminary matter, the Creditor's objection and Debtor's response do not procedurally comply with the local rules.

First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). 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 filed its first *Objection to Confirmation of Chapter 13 Plan* on May 20, 2022 ("First Objection"), which is the subject of matter #9 below. Doc. #18. The First Objection concerns Creditor's Proof of Claim No. 2 filed May 9, 2022 in the amount of \$634,094.75. *Id.*; *cf.*

Claim 2-1. Claim 2 involves a promissory note secured by a deed of trust on real property located at 12104 Timberpointe Drive, Bakersfield, CA 93312. The DCN for the First Objection is JCW-1.

Then, on May 24, 2022, Creditor filed this second *Objection to Confirmation of Chapter 13 Plan* ("Second Objection") in connection with Creditor's Proof of Claim No. 3 filed May 24, 2022 in the amount of \$615,134.88. Doc. #27. The DCN for this Second Objection is also JCW-1 and therefore it does not comply with the local rules. Since this is a separate objection on a separate claim, it is a separate matter that should have contained a different DCN.

Typically, this deficiency would result in both objections being overruled without prejudice. However, since both objections were filed under LBR 3015-1(c)(4), the objections had to be filed within seven days of the first § 341(a) meeting of creditors that was held on May 17, 2022. Because the objections cannot be refiled under LBR 3015-1(c)(4), the court will overlook this procedural deficiency in this instance under LBR 1001-1(f).

Second, Debtor's opposition is tantamount to an objection to a proof of claim under Federal Rule of Bankruptcy Procedure ("Rule") 3007. Rule 3007(a)(1) requires an objection to proof of claim to be filed and served at least 30 days before any scheduled hearing. Additionally, LBR 3007-1(b)(1) and (b)(2) set forth procedure for objecting to proofs of claim on either 44 days' or 30 days' notice. Here, Debtor's objection to Creditor's proof of claim was not separately set for hearing on the proper notice required under Rule 3007(a)(1) or LBR 3007-1(b)(1) or (b)(2), which warrants overruling the objection without further hearing.

Turning to the objection: Creditor is the holder of a promissory note that matures September 1, 2055 and is secured by a deed of trust encumbering Property. As of April 5, 2022, Debtor owed \$169,602.77 in arrears. See Claim 3. The Plan lists Creditor in Class 1 with only \$36,250.00 in arrears and proposes to pay Creditor \$577.00 per month. Doc. #12. Creditor says that Debtor would have to make payments of \$2,826.71 to cure the arrearage within 60 months. However, the Plan only provides for monthly payments of \$1,301.00 over 60 months, and Debtor does not have sufficient funds to increase the payment to an amount sufficient to cure the arrearage. On this basis, Creditor argues that the Plan is not feasible. Doc. #27.

Debtor's response objects to Creditor's Claim 2 and focuses on the First Objection in matter #9 below. Thus, Debtor has not responded to this Second Objection.

This matter will be called and proceed as scheduled. The court is inclined to CONTINUE this objection to August 3, 2022 at 9:00 a.m. so that Debtor and Creditor can file and serve a response and reply, respectively.

Unless this case is voluntarily converted to chapter 7, dismissed, or Creditor's objection is withdrawn, Debtor shall file and serve a written response not later than July 20, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Creditor shall file and serve a reply, if any, by July 27, 2022.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than July 27, 2022. 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.

9. [22-10569](#)-B-13 **IN RE: SUMAIRA RAHMAN**
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MTGLQ INVESTORS, LP
5-20-2022 [[18](#)]

MTGLQ INVESTORS, LP/MV
JENNIFER WONG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to August 3, 2022 at 9:00 a.m.

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

MTGLQ Investors, LP, its assignees and/or successors, by and through its servicing agent Rushmore Loan Management Services, LLC ("Creditors") objects to the *Chapter 13 Plan* dated April 15, 2022 ("Plan") of *pro se* debtor Sumaira Rahman ("Debtor") because the Plan does not provide for full payment of the arrears owed on account of a promissory note secured by a deed of trust on real property located at 12104 Timberpointe Drive, Bakersfield, CA 93312 ("Property"), and the Plan is not feasible. Doc. #18.

Though not required, Debtor filed opposition. Doc. #35.

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

As a preliminary matter, the Creditor's objection and Debtor's response do not procedurally comply with the local rules.

First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). 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 filed this first *Objection to Confirmation of Chapter 13 Plan* on May 20, 2022 ("First Objection"). Doc. #18. The First Objection concerns Creditor's Proof of Claim No. 2 filed May 9, 2022 in the amount of \$634,094.75. *Id.*; *cf.* Claim 2-1. The DCN for the First Objection is JCW-1.

Then, on May 24, 2022, Creditor filed a second *Objection to Confirmation of Chapter 13 Plan* ("Second Objection") in connection with Creditor's Proof of Claim No. 3 filed May 24, 2022 in the amount of \$615,134.88. Doc. #27. The Second Objection is the subject of matter #8 above. Claim 3 involves a promissory note secured by a deed of trust on real property located at 1897 Ribera Drive, Oxnard, CA 93030. The DCN for this Second Objection is also JCW-1 and therefore it does not comply with the local rules. Since the Second Objection is a separate objection on a separate claim, it is a separate matter that should have contained a different DCN.

Typically, this deficiency would result in both objections being overruled without prejudice. However, since both objections were filed under LBR 3015-1(c)(4), the objections had to be filed within seven days of the first § 341(a) meeting of creditors that was held on May 17, 2022. Because the objections cannot be refiled under LBR 3015-1(c)(4), the court will overlook this procedural deficiency in this instance under LBR 1001-1(f).

Second, Debtor's opposition is tantamount to an objection to a proof of claim under Federal Rule of Bankruptcy Procedure ("Rule") 3007. Rule 3007(a)(1) requires an objection to proof of claim to be filed and served at least 30 days before any scheduled hearing. Additionally, LBR 3007-1(b)(1) and (b)(2) set forth procedure for objecting to proofs of claim on either 44 days' or 30 days' notice. Here, Debtor's objection to Creditor's proof of claim was not separately set for hearing on the proper notice required under Rule 3007(a)(1) or LBR 3007-1(b)(1) or (b)(2), which warrants overruling the objection without further hearing.

Turning to the objection: Creditor is the holder of a promissory note that matures November 1, 2055 and is secured by a deed of trust encumbering Property. As of April 5, 2022, Debtor owed \$183,118.67 in arrears. See Claim 2. The Plan lists Creditor in Class 1 with only \$34,575.00 in arrears and proposes to pay Creditor \$605.00 per month. Doc. #12. Creditor says that Debtor would have to make payments of \$3,051.97 to cure the arrearage within 60 months. However, the Plan only provides for monthly payments of \$1,301.00 over 60 months, and Debtor does not have sufficient funds to increase the payment to an amount sufficient to cure the arrearage. On this basis, Creditor argues that the Plan is not feasible. Doc. #18.

In response, Debtor objects to Creditor's Claim 2. Doc. #35. As noted above, this is not the proper forum for Debtor's objection to proof of claim, which should be filed on either 44- or 30-days' notice using the procedure specified under LBR 3007-1(b) (1) or (b) (2).

Debtor claims that Creditor's Claim 2 contains a Lost Note Affidavit, Deed of Trust, and two forged assignments. *Id.* Debtor says that Capital One never obtained the rights to the note and deed of trust that it could transfer to Creditor, so the assignment from Capital One to Creditor is defective. In sum, Debtor claims that Creditor has failed to produce competent evidence of an effective assignment, and therefore Creditor lacks standing as a secured creditor. On this basis, Debtor asks that Creditor's First Objection be overruled.

This matter will be called and proceed as scheduled. The court is inclined to CONTINUE this objection to August 3, 2022 at 9:00 a.m. so that Debtor and Creditor can file and serve a proper response and reply, respectively.

Unless this case is voluntarily converted to chapter 7, dismissed, or Creditor's objection is withdrawn, Debtor shall file and serve a written response not later than July 20, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Creditor shall file and serve a reply, if any, by July 27, 2022.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than July 27, 2022. 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.

10. [22-10569](#)-B-13 **IN RE: SUMAIRA RAHMAN**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
5-25-2022 [\[31\]](#)

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

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

DISPOSITION: Continued to August 3, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to the confirmation of Sumaira Rahman's ("Debtor") *Chapter 13 Plan* dated April 15, 2022 ("Plan"). Doc. #31. Trustee objects for four reasons:

1. The Plan fails to comply with applicable provisions of the Bankruptcy Code as required by 11 U.S.C. § 1325(a)(1);
2. Debtor will not be able to make all payments due under the Plan and comply with the Plan as required by § 1325(a)(6);
3. The Plan fails to provide for the value of property to be distributed under the plan on account of each allowed unsecured claim in at least the amount that would be paid if this case was liquidated under chapter 7 as required by § 1325(a)(4); and
4. Debtor has not filed applicable tax returns in violation of § 1325(a)(9).

First, Trustee objects because the Plan is not complete because Debtor has not filled out all sections that would normally be completed. Doc. #31. As result, Trustee reserves the right to supplement this objection when Trustee has further information. Additionally, the § 341 meeting of creditors has not concluded because Trustee has not received all documents from Debtor. The continued meeting is set for July 12, 2022.

Second, Trustee objects because the Plan is not feasible. *Id.* The Plan proposes that Debtor will pay \$1,301.00 over 60 months. Doc. #12. However, Debtor does not have the disposable income to make both the Plan payment and the contractually due mortgage payments, or cure mortgage arrears. Trustee says that the Plan funds over 275 years. Doc. #31.

In Class 1, the Plan provides for payment of two mortgages, both owing to MTGLQ Investors, LP, care of Rushmore Loan Management Services, LLC ("Creditor"). The Plan proposes a post-petition monthly payment of \$577.00 for property located at 12104 Timberpoint in Bakersfield, California, but states arrears of \$34,575.00 with no monthly dividend. In contrast, Creditor's Claim 2-1 filed May 9, 2022 indicates that pre-petition arrears total \$183,118.67 with an ongoing post-petition monthly payment of \$2,103.98. Doc. #12; *cf.* Claim 2-1.

With respect to the second mortgage for property at 1897 Ribera Drive in Oxnard, California, the Plan proposes a post-petition monthly payment of \$605.00, but states arrears of \$36,250.00 with no monthly dividend. But Creditor's Claim 3-1 indicates that the pre-petition arrearage is \$169,602.77 with an ongoing post-petition monthly payment of \$2,147.86. Claim 3-1. Based on these proofs of claim, payment of the Class 1 arrears over 60 months would require monthly payments of \$10,130.53. Thus, Trustee contends that the Plan is not feasible on its face. Doc. #31.

Third, Trustee anticipates that the liquidation requirement is approximately \$98,558.75, which is comprised of equity in real estate and Debtor's 2020 tax refund. *Id.* However, this amount is only estimated because Trustee has not received a copy of Debtor's 2021 taxes.

Fourth, Trustee has not received Debtor's 2021 tax returns. *Id.* Trustee indicates that Debtor testified at the § 341 meeting that no tax returns have been filed in violation of § 1325(a)(9).

This objection will be CONTINUED to August 3, 2022 at 9:00 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection is withdrawn, Debtor shall file and serve a written response not later than July 20, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Trustee shall file and serve a reply, if any, by July 27, 2022.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than July 27, 2022. 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.

11. [22-10377](#)-B-7 **IN RE: MARCELLA MARQUEZ**
[JCW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM CO-DEBTOR STAY
4-8-2022 [\[22\]](#)

REVERSE MORTGAGE FUNDING
LLC/MV
JENNIFER WONG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order after hearing.

Reverse Mortgage Funding LLC, its assignees and/or successors, by and through its servicing agent Compu-Link Corporation dba Celink ("Movant") seeks relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1), as well as relief from the co-debtor stay under § 1301(c), with respect to real property located at 724 South Orange Avenue, Rialto, CA 92376-6920 ("Property"). Doc. #22. Movant also

requests this order to be binding and effective under § 362(d)(4) in any other bankruptcy purporting to affect Property for a period of two years after entry of the order. *Id.*

Marcella Marquez ("Debtor"), *pro se*, filed a responsive declaration on April 27, 2022. Doc. #38. Debtor notes that Property is not listed in the schedules and claims to have no knowledge of the transferors who purportedly transferred an interest in Property to her. Debtor opposes implementation of a two-year bar in any bankruptcy purporting to affect Property under § 362(d)(4).

Debtor converted the case from chapter 13 to chapter 7 on April 29, 2022. Doc. #42. Chapter 7 trustee Jeffrey M. Vetter ("Trustee") was appointed as interim trustee on April 29, 2022 but was not initially served because he was appointed after the motion was filed. Docs. #28; #40. Mr. Vetter and the United States Trustee ("UST") were served by U.S. mail on May 2, 2022. Doc. #47. Due to inadequate notice on Trustee, the court continued the hearing on this matter and ordered Movant to file and serve notice of the continued hearing to all necessary parties not later than May 11, 2022. Doc. #53.

On May 5, 2022, filed a *Notice of Continued Hearing on Motion for Relief from the Automatic Stay* and served it on Debtor, Trustee, the UST, and non-debtor deceased third parties John R. Whalen and Charlotte Whalen ("Original Borrowers") the same day. Docs. ##55-56.

Since Debtor is not represented by counsel, this matter will be called and proceed as scheduled. The court intends to GRANT the motion at the hearing.

The continued hearing on this motion was noticed on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the Debtor, Trustee, UST, the Original Borrowers, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo 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(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

An order entered under § 362(d)(4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

To obtain relief under § 362(d)(4), Movant must show and the court must affirmatively find the following three elements: (1) the Debtor's bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud creditors, and (3) the scheme must have involved either the transfer of some interest in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

A scheme is an intentional construct - it does not happen by misadventure or negligence. *In re Duncan & Forbes Dev., Inc.*, 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). A § 362(d)(4)(A) scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." *Id.* It is not common to have direct evidence of an artful plot or plan to deceive others; the court must infer the existence and contents of a scheme from circumstantial evidence. *Id.* Movant must present evidence sufficient for the trier of fact to infer the existence and content of the scheme. *Id.*

After review of the included evidence, the court finds "cause" exists to lift the stay. Movant, via assignment, is the holder of an *Adjustable Rate Note (Home Equity Conversion)* dated August 24, 2007 in the principal amount of \$480,000 ("Note"), which is secured by an *Adjustable Rate Home Equity Conversion (Reverse Mortgage) Deed of Trust* dated the same that was executed by Original Borrowers. Docs. #24; #25, Exs. 1-3.

On or around February 12, 2007, Original Borrowers purportedly transferred an interest in Property via unauthorized grant deed to (i) John R. Whalen an undivided 45% vested interest; (ii) Charlotte J. Whalen an undivided 45% vested interest; and (iii) Debtor a 10% vested interest, all as Tenants in Common. *Id.*, Ex. 5, at 21. Though allegedly executed in February 2007, the unauthorized grant deed was not recorded until March 10, 2022 - one day before Debtor filed this bankruptcy. *Ibid.*; cf. Doc. #1. Movant was not aware of this grant deed and did not consent to the transfer. Doc. #24.

John R. Whalen died on July 15, 2020. Doc. #25, Ex. 4, at 19. According to the death certificate, Mr. Whalen was widowed, which implies that Charlotte J. Whalen is also deceased. *Id.* Julie L. Whalen appears to be Original Borrower's next of kin. *Id.*

As result of Mr. Whalen's death, the Note's acceleration clause was triggered causing the loan to become due and payable in the full amount of \$300,743.01. *Id.*, *Ex. 3*, at 15, § 7(A). As a result, Movant commenced foreclosure proceedings by recording a *Notice of Default* on October 25, 2021 and scheduled a foreclosure sale for March 21, 2022. *Id.*, *Ex. 5*, at 23. On the date of the foreclosure sale, Quality Loan Service Corporation, the foreclosing trustee, received a facsimile with a copies of the unauthorized grant deed, *Notice of Default*, and the first two pages of Debtor's bankruptcy petition. *Id.*, *Ex. 5*, 20-27.

Thus, based on the moving papers and the record, the loan owed to Movant became due and payable in full due to the death of Original Borrowers on July 15, 2020. Movant has produced evidence that Original Borrowers owe at least \$300,743.01 as of March 24, 2022. Doc. #24.

Debtor declares that she does not know who Original Borrowers are or why she is listed on their title deed. Doc. #38. Debtor opposes relief from the stay with implementation of a two-year bar in any bankruptcy purporting to affect Property under § 362(d)(4). *Id.*

However, Debtor's lack of knowledge about Property or the Original Borrowers is not persuasive. If Debtor truly does not have any knowledge about Property, Original Borrowers, or why Original Borrowers conveyed an interest in Property to her, she should not be bothered by this court granting this motion.

This bankruptcy has also affected the interests of other creditors. The court takes judicial notice *sua sponte* of other pleadings filed in this bankruptcy case. Fed. R. Evid. 201.

Secured creditor U.S. Bank National Association ("US Bank") has a pending motion for relief from the automatic stay with respect to property located at 3708 Sue Lin Way, Bakersfield, CA 93309 ("Sue Lin Way"). See Doc. #31; ELP-1. US Bank requests that order also be binding and effective for two years under § 362(d)(4). Sue Lin Way was owned by third party Alan Lee Babb, who filed five bankruptcies before conveying the Sue Lin Way to Debtor and another third party, Michelle Valencia. Michelle Valencia subsequently filed two bankruptcies, followed by Debtor filing this bankruptcy.

US Bank's motion is currently pending and was continued for failure to serve Trustee because the motion was filed pre-conversion. See Doc. #60. Despite that continuance, the court found that Debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors, and the scheme involved the transfer of all or some part of ownership in Sue Lin Way without the consent of the secured creditor, and multiple parties had filed multiple bankruptcies purporting to affect Sue Lin Way in a short amount of time. The court is not ruling on US Bank's motion here.

Here, although Property appears to only have been affected by this bankruptcy, Debtor's filing of the petition was part of a scheme. The object of that scheme was to delay, hinder, or defraud creditors, including Movant and US Bank, though the court is not ruling on US Bank's motion at this time. The scheme involved the transfer of a 10% ownership interest in Property without the consent of the secured creditor.

This matter will be called and proceed as scheduled. The court intends to GRANT this motion pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. The court intends to further order, pursuant to § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of part of an ownership interest in Property without the consent of the secured creditor. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect Property as described in the motion not later than two years after the date of entry of the order.

10:00 AM

1. [22-10315](#)-B-7 **IN RE: JESUS/CHRISTINE RODRIGUEZ**
[JMV-2](#)

AMENDED MOTION TO SELL
5-11-2022 [[27](#)]

JEFFREY VETTER/MV
R. BELL/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.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") seeks authorization to (i) sell the estate's interest in a 2017 Chevrolet Malibu ("Vehicle") at public auction under 11 U.S.C. § 363(b)(1); and (ii) compensate Gould Auction & Appraisal Company ("Auctioneer") under §§ 327(a) and 328. Doc. #27. The auction will be held on June 25, 2022 at 9:00 a.m. at Gould Auction & Appraisal Company, 6100 Price Way, Bakersfield, CA 93308. *Id.* Trustee also requests waiver of the 14-day stay under Federal Rule of Bankruptcy Procedure ("Rule") 6004(h). *Id.*

No party in interest timely filed written opposition. This motion will be GRANTED IN PART as to the sale and compensation but DENIED IN PART as to the request for waiver of the 14-day stay under Rule 6004(h).

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(2) and (a)(6). The failure of the creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered. 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.

This motion affects the proposed disposition and the Auctioneer. Under Federal Rule of Civil Procedure ("Civ. Rule") 21 (Rule 7021

incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by movant here as to the proposed auctioneer and use the court's discretion to add a party under Civ. Rule 21.

Compensation is separate from the sale. Since this relief and appointing the Auctioneer are separate claims, the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent an objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Trustee, having requested this relief, is deemed to have notice. Since no party timely filed written opposition, defaulted parties are deemed to have consented to application of this rule.

Jesus Rodriguez and Christine Kates Rodriguez ("Debtors") filed chapter 7 bankruptcy on February 28, 2022. Doc. #1. Trustee was appointed as interim trustee that same date and became permanent trustee at the first § 341 meeting of creditors held April 22, 2022. Doc. #6; see also docket generally.

In the course of administering the estate, Trustee investigated Debtor's assets. Doc. #29. Among those assets is Vehicle, which is listed in the schedules with approximately 59,574 miles and valued at \$14,875.00. Doc. #1, Sched. A/B, ¶ 3.1. Vehicle does not appear to be encumbered by any security interests. *Id.*, Sched. D. Further, no party has filed a proof of claim asserting any interest in Vehicle. See Claims Register. Debtor claimed a \$3,325.00 exemption in Vehicle pursuant to Cal. Code Civ. Proc. ("CCP") § 704.010. Doc. #1, Sched. C.

Contemporaneously with this motion, Trustee filed an *ex parte* application to employ Auctioneer. Doc. #19; JMV-1. On May 19, 2022, the court approved Auctioneer's employment under § 327 to sell Vehicle. Doc. #32. Trustee was authorized to pay Auctioneer within 10 days after any order approving the sale of Vehicle, or of receipt of funds from the buyer, whichever is later. The order specified that Auctioneer would receive as compensation: (i) a 15% commission on the gross proceeds of the sale, (ii) a 10% buyer's premium to be paid by the buyer, (iii) \$100.00 as an expense reimbursement for pickup and storage of the Vehicle; and (iv) up to \$150.00 for any extraordinary expenses, such as a repair or detail work deemed by Trustee to be necessary and beneficial to the estate. *Id.* Since Auctioneer will use the online service Proxibid, a buyer who purchases using this service will always pay an additional 3% fee directly to Proxibid for the use of their service. *Id.*

Trustee wishes to sell Vehicle and compensate Trustee on the terms stated above. Doc. #29. The court will authorize Trustee to pay the 15% commission and reimbursement of \$100.00 for preparation and storage expenses, and up to \$150.00 extraordinary expenses deemed necessary and beneficial to the estate by Trustee.

Proposed Sale

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, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 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., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Trustee wishes to sell Vehicle under § 363(b). Doc. #29. As noted above, Vehicle has a scheduled value of \$14,875 with no secured creditors, but with a claimed exemption of \$3,325.00 under CCP § 704.010. Trustee declares that Vehicle is scheduled for \$17,875.00, but that is not correct. Doc. #29; cf. Doc. #1, *Sched. A/B*. Regardless, Trustee believes that Vehicle will sell for approximately \$15,000.00. Doc. #29.

If Vehicle sells for Trustee's anticipated sale price of \$15,000.00, the sale would be illustrated as follows:

Sale price of Vehicle	\$15,000.00
Auctioneer compensation (15%)	- \$2,250.00
Storage/Pickup fees	- \$100.00
Extraordinary expenses (≤ \$150)	- \$150.00
Debtors' claimed exemption	- \$3,325.00
Net to the estate	= \$9,175.00

Thus, the sale would net approximately \$9,175.00 to the estate, and possibly more if Vehicle sells for more than anticipated or Auctioneer does not have extraordinary expenses.

Trustee believes that using the auction process to sell Vehicle will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #29. Based on Trustee's experience, this will yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate. The sale of the Vehicle appears to be in the best interests of the estate because it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

No party in interest timely filed written opposition. This motion will be GRANTED IN PART. Trustee will be authorized to sell Vehicle at public auction on or after June 25, 2022, and to pay Auctioneer for its services as outlined above on a percentage collected basis: 15% of gross proceeds from the sale, \$100 for pickup and storage expenses, and up to \$150 in extraordinary expenses as determined by Trustee.

Rule 6004(h)

Trustee's request for waiver of the 14-day stay under Rule 6004(h) will be DENIED because Trustee presents no legal or factual bases in support of such waiver. See *Paladino v. S. Coast Oil Corp. (In re S. Coast Oil Corp.)*, 566 F. App'x 594, 595 (9th Cir. 2014) (affirming waiver of 14-day stay because time was of the essence due to regulatory deadlines); *In re Ormet Corp.*, 2014 LEXIS 3071 (Bankr. D. Del. July 17, 2014) (finding cause to lift 14-day stay because the buyer required closing before the stay would expire). Trustee says that the auction will occur on or after June 25, 2022, which is more than 14 days after the hearing on this motion. Therefore, there do not appear to be any circumstances warranting waiver of the stay under Rule 6004(h).

2. [18-12985](#)-B-7 **IN RE: LAURA HEISLER**
[RSB-2](#)

MOTION TO AVOID LIEN OF AMERICREDIT FINANCIAL SERVICES, INC.
5-4-2022 [\[33\]](#)

LAURA HEISLER/MV
R. BELL/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.

Laura Ellen Heisler ("Debtor") seeks to avoid a judicial lien in favor of Americredit Financial Services, Inc. ("Creditor") in the sum of

\$39,062.37 and encumbering residential real property located at 4726 Pikes Peak Ln., Bakersfield, CA 93311 ("Property"). Doc. #33.

Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Daniel E. Berce, Creditor's director, at 801 Cherry St., Ste. 3600, Fort Worth, TX 76102. Doc. #37.

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

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

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$39,062.37 on November 6, 2017. Doc. #36, *Ex. D*. The abstract of judgment was issued on January 3, 2018 and recorded in Kern County on January 8, 2018. *Id.* That lien attached to Debtor's interest in Property and appears to be the only non-consensual lien encumbering Property. *Id.*; Doc. #1, *Sched. D*.

As of the petition date, Property had an approximate value of \$219,000.00. *Id.*, *Sched. A/B*; Doc. #35. Property is encumbered by a single \$189,065.00 deed of trust in favor of Wells Fargo Bank, N.A. *Id.*; Doc. #1, *Sched. D*. Debtor claimed a "homestead" exemption in Property pursuant to Cal. Code Civ. Proc. §§ 704.730 and 704.950 in the amount of \$29,935.00. *Id.*, *Sched. C*.

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

Amount of Creditor's judicial lien	\$39,062.37
Total amount of unavoidable liens	+ \$189,065.00
Amount of Debtor's claimed exemption in Property	+ \$29,935.00
<i>Sum</i>	= \$258,062.37
Debtor's claimed value of interest absent liens	- \$219,000.00
Amount Creditor's lien impairs Debtor's exemption	= \$39,062.37

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	\$219,000.00
Total amount of unavoidable liens	- \$189,065.00
Homestead exemption	- \$29,935.00
Remaining equity for judicial liens	= \$0.00
Creditor's original judicial lien	- \$39,062.37
Extent Debtor's exemption impaired	= (\$39,062.37)

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

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

11:00 AM

1. [22-10002](#)-B-7 **IN RE: GARRET BROWN**
[22-1011](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
4-11-2022 [[1](#)]

BROWN V. MIDLAND CREDIT
MANAGEMENT
PATRICK KAVANAGH/ATTY. FOR PL.

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

DISPOSITION: Continued to July 6, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

Debtor Garret T. Brown ("Plaintiff") filed this adversary complaint on April 11, 2022. Doc. #1. The *Summons and Notice of Status Conference in an Adversary Proceeding* was issued the very next day, April 12, 2022. Doc. #3. Plaintiff properly served the summons and complaint on creditor Midland Credit Management ("Defendant") in accordance with Fed. R. Bankr. P. 7004(b)(3) by serving Defendant's registered agent for service of process, Corporation Service Company, which will do business in California as CSC - Lawyers Incorporating Service, with a copy to Defendant, by regular U.S. mail on April 13, 2022. Doc. #6. The summons was issued on April 12, so the deadline for Defendant to file and serve an answer or other responsive pleading was May 12, 2022. No such answer has been filed.

This matter will be CONTINUED to July 6, 2022 at 11:00 a.m. Plaintiff is directed to seek entry of default. If the default is entered before the continued hearing date, the status conference will be further continued to the "prove-up" hearing date. If, at the time of the continued hearing, the default has not been entered or a "prove-up" hearing has not set, the court may issue an order to show cause regarding dismissal of this adversary proceeding for lack of prosecution.

2. [21-12598](#)-B-7 **IN RE: YINGCHUN LOU**
[22-1008](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
3-30-2022 [[1](#)]

U.S. TRUSTEE V. LOU
JASON BLUMBERG/ATTY. FOR PL.

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

DISPOSITION: Continued to July 6, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of *Plaintiff's Status Statement* filed by the United States Trustee ("Plaintiff") on June 1, 2022. Doc. #8. As stated, the parties have agreed to dismissal of debtor Yingchun Lou's ("Defendant") chapter 7 bankruptcy case with entry of a two-year bar to refiling. *Id.* Plaintiff's motion to dismiss the bankruptcy case was heard on June 2, 2022 and granted that same day. Doc. #66. Under the terms of the stipulation, Plaintiff is required to file a notice of dismissal without prejudice to Plaintiff's rights as U.S. trustee 11 U.S.C. § 524(b) after entry of the dismissal order with the two-year bar.

Accordingly, this status conference will be CONTINUED to July 6, 2022 at 11:00 a.m. to give Plaintiff time to comply with the stipulation entered in the underlying bankruptcy.

3. [21-11799](#)-B-13 **IN RE: VIRGIL CRUSE AND LISA GAVIN-CRUSE**
[21-1041](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT
10-4-2021 [[1](#)]

ONEMAIN FINANCIAL GROUP, LLC
V. CRUSE ET AL
DONALD DUNNING/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Concluded; dropped from calendar.

ORDER: The court will issue an order.

The parties stipulated to dismiss this adversary proceeding on or about May 11, 2022. Doc. #15. On May 16, 2022, the court approved the stipulation and dismissed the adversary proceeding without prejudice.

Doc. #16. Accordingly, this status conference is CONCLUDED and will be DROPPED FROM CALENDAR because the case has already been dismissed.

11:30 AM

1. [22-10103](#)-B-7 IN RE: JOSE/LIDIA RIOS

PRO SE REAFFIRMATION AGREEMENT WITH ONEMAIN FINANCIAL GROUP,
LLC
5-12-2022 [[22](#)]

OSCAR SWINTON/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

A reaffirmation agreement between debtors and creditor, Onemain Financial Group, LLC, was filed on May 12, 2022. Doc. #22. Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement.

Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable. The reaffirmation agreement between debtors and creditor, Onemain Financial Group, LLC, will be denied.