

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, June 30, 2022
Place: Department B – Courtroom #13
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [22-10947](#)-B-11 **IN RE: FLAVIO MARTINS**
[MB-1](#)

FINAL HEARING RE: MOTION TO USE CASH COLLATERAL, MOTION FOR
ADEQUATE PROTECTION
6-1-2022 [[6](#)]

FLAVIO MARTINS/MV
HAGOP BEDOYAN/ATTY. FOR DBT.

NO RULING.

The court issued a *Further Interim Order Authorizing Use of Cash Collateral, Granting Adequate Protection, and Notice of Final Hearing* on June 15, 2022. Doc. #51. The order authorized Flavio Almeida Martins ("Debtor") to use cash collateral through the week of June 26, 2022 with a 10% variance based on the *Revised Budget* filed June 10, 2022 (Doc. #42). *Id.*

In compliance with the interim order, Debtor filed a *Second Revised Budget* and a supporting declaration on June 27, 2022. Docs. ##63-64.

Lastly, the interim order requires Debtor to provide Western Milling and Bank of the Sierra with a current total herd count not later than June 30, 2022. Doc. #51.

This hearing will be called and proceed as scheduled.

11:00 AM

1. [22-10860](#)-B-7 **IN RE: MARCUS ROBINSON**

PRO SE REAFFIRMATION AGREEMENT WITH TD BANK, N.A.
6-7-2022 [[19](#)]

NO RULING.

1:30 PM

1. [20-11400](#)-B-7 **IN RE: MAJHAIL JASPAL**
[DMS-1](#)

RESCHEDULED HEARING RE: MOTION TO SELL
5-27-2022 [[41](#)]

DAVID SOUSA/MV
PETER BUNTING/ATTY. FOR DBT.
DAVID SOUSA/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee David M. Sousa ("Trustee") requests an order authorizing the sale of the estate's interest in a 2006 Honda Accord XL and a 1995 Toyota Avalon XLS (collectively "Vehicles") to Majhail Singh Jaspal ("Debtor") for \$4,030.00, subject to higher and better bids at the hearing. Doc. #41.

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

This motion was set to be heard on June 28, 2022 with 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(2). Doc. #42. On May 31, 2022, the hearing was rescheduled to June 30, 2022. Doc. #46. The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 363(b)(1) allows the trustee to "sell or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3)

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

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to the Debtor.

Per the schedules, the Honda Accord XL and Toyota Avalon have approximately 222,128 and 221,430 miles, respectively, and are valued at \$3,048.00 and \$982.00 for a combined \$4,030.00. Doc. #14, *Am. Sched. A/B*. The Vehicles do not appear to be encumbered by any liens or security interests. Doc. #1, *Sched. D*. Debtor claimed a \$922.00 exemption in the Honda Accord pursuant to Cal. Code Civ. Proc. ("CCP") § 704.010. *Id.*, *Sched. C*.

Trustee declares that he entered into an agreement with Debtor to purchase the Vehicles for \$4,030, less the CCP § 704.010 exemption of \$982.00, resulting in \$3,108.00 net proceeds for the bankruptcy estate subject to court approval. Doc. #43. Trustee has not agreed to pay a commission to any party in connection with the sale. *Id.* Trustee has researched similar vehicles and determined that the Vehicles have trade-in values between \$805 to \$1,605 for the Honda, and \$292.00 to \$1,041.00 for the Toyota. *Id.* Since Trustee will not incur any transaction costs in selling the Vehicles, he believes this transaction is in the best interest of the bankruptcy estate. The sale price was determined by estimating the Vehicles fair market value: \$4,030.00. *Id.* After application of Debtor's \$922.00 exemption credit, \$3,108.00 in net proceeds will remain for the estate. *Id.*

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

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

Any party wishing to overbid must appear at the hearing and acknowledge that no warranties or representations are included with the sale; the Vehicles are being sold "as-is, where-is."

2. [21-11806](#)-B-7 **IN RE: EDGAR/CELINA SALAMANCA**
[JDR-1](#)

RESCHEDULED HEARING RE: MOTION TO APPROVE LOAN MODIFICATION
5-31-2022 [[23](#)]

CELINA SALAMANCA/MV
JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Edgar Salamanca and Celina Salas Salamanca ("Debtors") request authority to enter into a home loan modification agreement to refinance their first deed of trust with Wells Fargo Bank, N.A. Doc. #23.

This motion will be DENIED because Debtors are not required to seek approval of this modification under the Local Rules of Practice ("LBR") and the motion has not presented any case or controversy upon which relief may be granted.

Debtors filed chapter 7 bankruptcy on July 22, 2021. Doc. #1. The court entered an *Order of Discharge* in favor of Debtors under 11 U.S.C. § 727 on November 2, 2021. Doc. #17.

11 U.S.C. § 524(c) provides that an agreement between a holder of a claim and the debtor the consideration for which is based in some part on a debt that is dischargeable is enforceable only to the extent enforceable under nonbankruptcy law and whether or not discharge of the debt is waived only if the conditions specified in § 524(c)(1) through (c)(6) are satisfied. One such condition on enforceability is that the agreement must be made before the granting of the discharge. § 524(c)(1).

Since discharge has already been entered, the loan modification agreement will not be enforceable against Debtors personally. The agreement acknowledges the discharge and reiterates that Debtors will not be personally liable because the agreement was not executed prior to discharge. Doc. #26, *Ex. A*; see also *In re Roderick*, 425 B.R. 556, 565 (Bankr. E.D. Cal. 2010) (post-discharge modifications cannot impose personal liability in the absence of a pre-discharge reaffirmation agreement).

Under § 524(f), none of the provisions contained in subsections (c) or (d) prevent a debtor from voluntarily repaying any debt. Debtors can enter into the loan modification agreement, but nothing in the Local or Federal Rules require approval of a voluntary loan modification outside of the context of a chapter 13 confirmation. See *In re Wofford*, 449 B.R. 362 (Bankr. W.D. Wis. 2011); *In re Smith*, 409 B.R. 1 (Bankr. N.H. 2009) (denying motion to approve loan modification because it presented no case or controversy because approval was not required).

LBR 3015-1(h)(1)(C) and (E) provide procedure to obtain approval of a refinance of existing debt securing a chapter 13 debtor's residence, or other new debt or transfers outside of the ordinary course of business in a chapter 13 case. In the absence of this local rule, approval is not required. Since this is a case filed under chapter 7, LBR 3015-1(h)(1)(C) and (E) are not applicable here.

Accordingly, this motion will be DENIED because the motion presents no case or controversy. Debtors do not need court approval to enter into this post-discharge loan modification agreement.

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

RESCHEDULED HEARING RE: MOTION TO AVOID LIEN
5-20-2022 [[53](#)]

SEQUOYAH KIDWELL/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Sequoyah Deserthawk Kidwell, formerly known as Jason Scott Harper ("Debtor"), *pro se*, seeks to avoid judicial lien(s) of (a) Kathleen Allison, Secretary/Bailee; (b) Rob Bonta, California Attorney General; (c) the Riverside County/Assessor County Clerk/Recorder; (d) California Substance Abuse Treatment Facility and State Prison; (e) the Franchise Tax Board; and (f) the Internal Revenue Service (collectively "Creditors") with respect to (1) "Debtor, and all Security Interest[;]" (2) Television 15' AMP'D Color TV; (3) fan; (4) hot-pot; (5) tablet; (6) clothes (sweat-suits, shorts, t-shirts, underwear, socks, shoes); (7) hygiene products; (8) headphones & radio; (9) book light; (10) legal books; and (11) ADA appliances (collectively "Property"). Doc. #53. This is Debtor's second attempt at filing this motion. The infirmities identified in the court's *Civil Minutes* dated May 10, 2022 have not been corrected. See Doc. #49.

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

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

Docket Control Number

First, LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case.

Here, the motion and supporting documents did not contain a DCN. Docs. ##53-54; ##57-58. Since Debtor is *pro se*, the DCN should use his initials. For example, a DCN such as SDK-1 would have been sufficient because that DCN has not yet been used.

Required Notice Language

Second, LBR 9014-1(d)(3)(B)(i) requires the notice of hearing to advise potential respondents whether and when written opposition must be filed and served. For motions filed on 28 days or more of notice, LBR 9014-1(f)(1)(B) requires the movant to notify respondents that any opposition to the motion must be in writing and filed with the court at least 14 days preceding the date of the hearing.

Here, the motion was filed on May 20, 2022 and set for hearing on June 28, 2022. Docs. ##53-54. On May 31, 2022, the Clerk issued a notice rescheduling the hearing to June 30, 2022. Doc. #55. May 20, 2022 is 39 days before June 28, 2022, and 41 days before June 30, 2022. Therefore, this hearing was set on more than 28 days' notice under LBR 9014-1(f)(1). The notice did not provide any information regarding whether and when opposition must be filed and served. Because the hearing was set on 28 days' notice, LBR 9014-1(f)(1) is applicable and the notice should have stated that written opposition was required, must be filed 14 days before the hearing, and failure to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion. Additionally, under LBR 9014-1(d)(3)(B)(i),

the motion must include the names and addresses of the persons who must be served with such opposition.

Court Website

Third, the notice of hearing did not contain necessary language informing potential respondents of the pre-hearing dispositions that are available on the court's website. Doc. #54. LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

Certificate of Service

Fourth, no certificate of service was filed with this motion. LBR 9014-1(e) requires the movant to serve all pleadings and documents filed in support of a motion on or before the day they are filed, with proof of such service in the form of a certificate of service to be filed with the Clerk concurrently with the pleadings or documents served, or not more than three days after they are filed. LBR 9014(e)(1), (e)(2). LBR 9014-1(e)(3) requires each proof of service to be filed separately, bear the DCN of the matter to which it relates, and identify the title of the pleadings and documents served.

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

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

In addition to serving all Creditors, Peter L. Fear ("Trustee") was appointed as the chapter 7 trustee in this case. Trustee is the representative of the estate and is responsible for its

administration. 11 U.S.C. §§ 323, 704. Trustee must be served in accordance with Rule 7004.

Signatures

Fifth, neither the motion nor notice contain the Debtor's signature. Docs. ##53-54. Both documents have a crossed-out section for the signature of the Honorable René Lastreto II, but neither are signed by Debtor or anyone else. If a party is appearing *in propria persona*, LBR 9004-1(c) requires all pleadings and non-evidentiary documents to be signed by the party with the name of the person signing the document typed underneath the signature.

Failure to State a Claim to Relief

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

The caption indicates that Debtor is requesting relief under 11 U.S.C. § 523 and 18 U.S.C. § 1001. Section 523 governs exceptions to discharge for certain types of debts. Debtor seeks lien avoidance but has invoked a statute that provides a cause of action to creditors seeking to preclude the discharge of a debt owed by a debtor. This type of relief is available to Creditors, or in certain circumstances, a debtor may file an action for a determination of dischargeability of a certain debt. This motion is not that circumstance. A determination of the dischargeability of a debt requires an adversary proceeding. Rule 7001(6). None have been filed here.

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

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

Here, the motion has not established (1) Debtor is entitled to an exemption; (3) the lien(s) impair the exemption; and (4) the lien is a

judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). No evidence of any liens or non-possessory, non-purchase money security interests have been provided. The court cannot avoid a liens that are only speculated to exist.

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

The particularity requirement is restated in the local rules:

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

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

Here, the motion states that all of the Creditors have a judicial lien impairing Debtor's exemption in Property. Doc. #53. Without any analysis, the motion says that "the lien of the respondent(s) is here by extinguished and the lien shall not survive bankruptcy or affix to or remain enforceable against the Debtor or the aforementioned property of the debtor." *Id.* Then, the motion says that Creditors shall take all necessary steps to remove any record of the lien on Property. *Id.*

On June 2, 2022, Debtor filed the following unsigned documents:

- i. *Notice of Entry of Default/With Declaration Attached;*
- ii. *Declaration of Sequoyah Kidwell;*
- iii. *Entry of Default for California Substance Abuse Treatment Facility & State Prison, (CSATF/SP);*
- iv. *Entry of Default for Franchise Tax Board;*
- v. *Entry of Default for Kathleen Allison Secretary/Bailee;*
- vi. *Entry of Default for Kathleen Allison Secretary of CDCR;*
- vii. *Entry of Default for Riverside County Assessor County Clerk recorder;*
- viii. *Entry of Default for Rob Bonta California Attorney General; and*
- ix. *Entry of Default for Ursela Dean I.R.S. Operations Manager II;*

Doc. #57. None of these documents have any force or effect because they were filed using the entry of default procedure specified in LBR 7055-1. Further, such procedure is not necessary in the lien avoidance context of § 522(f), and no adversary proceedings have been filed. Should Debtor seek relief outside of the scope of § 522(f), such as to

recover money or property, determine the validity, priority, or extent of a lien or other interest in property, or obtain a declaratory judgment, then Debtor will need to file an adversary proceeding in accordance with the local and federal rules. Rule 7001(1), (2), (9).

Conclusion

Despite these procedural and substantive errors, the court must treat *pro se* litigants "with great leniency when evaluation compliance with the technical rules of civil procedure." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) (citing *Draper v. Coombs*, 795 F.2d 915, 924 (9th Cir. 1986)). "Thus, before dismissing a *pro se* complaint the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity amend effectively." *Ferdik*, 963 F.2d at 1261, citing *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).

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

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

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

4. [21-11635](#)-B-7 **IN RE: JUAN CORDERO**
[ICE-2](#)

RESCHEDULED HEARING RE: MOTION TO SELL
5-20-2022 [[33](#)]

JAMES SALVEN/MV
MONICA ROBLES/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.
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 unless another disposition occurs at the hearing.

Chapter 7 trustee James E. Salven ("Trustee") requests an order authorizing the sale of the estate's interest in real property located

at 156 Solano Street, Madera, CA 93638 ("Property") to Juan Cordero ("Debtor") for \$25,000.00, subject to higher and better bids at the hearing. Doc. #33. This amount is derived from a sale price of \$312,000.00, less a \$235,114.00 first deed of trust, and \$29,275.00 exemption. Doc. #35.

PennyMac Loan Services, LLC ("Creditor") timely filed non-opposition to the motion. Doc. #43. Creditor is the holder of the first deed of trust encumbering Property and indicates that the current payoff due and owing is \$221,203.39 through June 15, 2022. *Id.*

No other parties in interest timely filed written opposition. However, the request for relief and the terms of the sale are unclear. Since the terms of the sale appear to be ambiguous, the court is inclined to DENY WITHOUT PREJUDICE. This matter will be called as scheduled to inquire about the sale price, payoffs, and the net proceeds paid to the estate. If the court grants the motion, the matter may proceed for higher and better bids.

This motion was set to be heard on June 28, 2022 with 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(2). Doc. #34. On May 31, 2022, the hearing was rescheduled to June 30, 2022. Doc. #38. The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. 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).

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

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to the Debtor.

Debtor listed Property in the schedules with a value of \$290,000.00. Doc. #14, *Am. Sched. A/B*. Property is encumbered by a deed of trust in favor of Creditor in the petition-date amount of \$235,114.00, but Creditor has indicated the payoff as of June 15, 2022 is \$221,203.39. Doc. #13, *Am. Sched. D*; cf. Doc. #43. Debtor claimed a \$29,275.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 703.140(b)(1). Doc. #27, *Am. Sched. C*.

Besides Creditor's deed of trust, Property does not appear to be encumbered by any judgment liens. Doc. #13, *Am. Sched. D*. The motion claims that Trustee is not aware of any other liens on the Property. Doc. #33, citing Edmonds Decl., ¶ 12. However, Irma C. Edmonds, Trustee's attorney, did not file any declarations with this motion.

If there are any other liens on the Property, Trustee contends those liens would be subject to avoidance or subject to bona fide dispute. The court will not order the sale free and clear of any liens or encumbrances under 11 U.S.C. § 363(f). If any lienholder asserts a lien, such lien shall attach to the proceeds of the sale.

Trustee entered into an agreement with Debtor, subject to court approval, to sell Property to Debtor for \$312,000.00, less the first deed of trust and exemption under CCP 704.730(b)(1). Doc. #35. Trustee says that the resulting net to the estate, as well as the purchase price, will be \$25,000.00. *Id.* It is unclear how this amount of net proceeds was determined. The sale appears to be illustratable with varying payoffs as follows:

	Trustee's Estimate	06/15/22 Payoff
Sale price	\$312,000.00	\$312,000.00
Creditor's deed of trust	- \$221,203.39	- \$235,114.00
Debtor's exemption	- \$29,275.00	- \$29,275.00
Net to estate	= \$61,521.61	= \$47,611.00
Claimed net to estate	- \$25,000.00	- \$25,000.00
Discrepancy	= \$36,521.61	= \$22,611.00

Id.; Docs. #33; #43. If the sale price is actually \$312,000, then using either Creditor's payoff as of June 15, 2022 or Trustee's estimated payoff from the schedules, the net to the estate should range from \$47,611.00 to \$61,521.61. It is unclear where \$22,611.00 to \$36,521.61 in net proceeds are going.

Trustee says that the estate will not incur any transaction costs in selling Property to Debtor. *Id.* However, in the motion, Trustee says that as the estate's accountant, he has "confirmed that the estate will incur a small tax liability from the sale of the Property."

Doc. #33 at 2, ¶ A2, citing Salven Decl., Doc. #35, ¶ 5. Trustee's declaration only goes up to ¶ 4. Doc. #35. Paragraph 5 does not exist.

Additionally, the notice of hearing says that the motion is requesting to pay the reasonable and necessary costs and expenses of closing through escrow, including the estate's pro-rata share of real property taxes and assessments secured against the Property upon the closing of escrow. Doc. #34. This appears to contradict the declaration, which says that there will be no transaction costs. Doc. #35.

Further, the Purchase Agreement between Debtor and Trustee is ambiguous. It provides the following terms:

1. Purchase Price. The "**Purchase Price**" for the Property shall be \$312,000.00. . . .
3. Payment. Purchaser has tendered the Purchase Price in full.
 - a. Upon Approval. On approval, the Trustee shall receive the following amount: \$25,000.00
 - b. The Purchase Price, less
 - c. 1st Deed of Trust \$235,114.00, less
 - d. Debtor's claimed exemption of \$29,275.00.

Doc. #36, Ex. A, at 2 (emphasis in original).

So, does this mean Debtor tendered \$47,611.00² and will pay an additional \$25,000 on court approval?

Since the motion says the first overbid shall be \$26,000, does that mean that a winning bidder would be paying \$26,000 for the option to pay a \$312,000 purchase price to pay off the first deed of trust, \$47,611 to the estate, and \$29,275 to Debtor?

But because Creditor's non-opposition provides for a reduced payoff of \$221,203.39, does that mean a successful \$26,000 bidder would still pay \$312,000, which would include the reduced payoff, \$61,521.61 to the estate, and \$29,275 to Debtor?

Trustee believes the proposed sale is in the best interests of creditors and the estate because it is for the full and fair market value of the Property. *Id.*

Though the sale appears to be in the best interests of creditors and the estate, supported by a valid exercise of Trustee's business judgment, and proposed in good faith, it is unclear whether the sale is for a fair and reasonable price due to the payoff discrepancy. While ordinarily the sale subject to higher and better bids would maximize estate recovery and yield the best possible sale price, the basis for the \$25,000 starting bid sale price is confusing.

Trustee requests to use the following overbid procedure and sale terms:

- a. Any party overbidding must agree to purchase the Property on identical terms as the proposed Purchase Agreement (aside from increased price). See Doc. #36, *Ex. A*.
- b. The proposed overbidder must first qualify to bid by demonstrating to the satisfaction of Trustee Salven that they have the financial ability to close the transaction according to the Purchase Agreement—such demonstration should be made within 7 days of the hearing.
- c. The purchase price is \$25,000.
- d. The first overbid must be at least \$26,000, and successive bids must be in increments of at least \$1,000.
- e. Any successful overbidder must deliver to Trustee within 7 days of the hearing, by cashier's check, a deposit of \$1,000. If the overbidder timely completes the purchase, the deposit will apply to the purchase price, but if the overbidder defaults, the deposit will be nonrefundable.
- f. No representations by the seller regarding the condition of the Property or environmental hazards are expressed or implied;
- g. Property is sold in its "as-is" condition with any and all faults and defects. Buyer will make its own investigation of the Property. The sale of the Property is without any representation or warranty, express or implied, of any kind by the seller, and the seller will make no repairs to the Property; and
- h. Trustee is unaware of any liens, but if there are any unknown liens on the Property, they shall attach to the proceeds of the sale.

This matter will be called as scheduled to inquire about the issues identified above.

² Based on the Purchase Agreement, if Debtor has "tendered the Purchase Price in full", which is the \$312,000 Purchase Price less the \$235,114.00 deed of trust, less the \$29,275.00 exemption, then it appears that Debtor has tendered \$47,611.00. Doc. #36, *Ex. A*, at 2.

5. [22-10744](#)-B-7 **IN RE: EMELIA BARAJAS AND JUAN ESPINO**
[JRL-1](#)

RESCHEDULED HEARING RE: MOTION TO AVOID LIEN OF DYCK-O'NEAL,
INC.
5-26-2022 [\[17\]](#)

JUAN ESPINO/MV
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Emilia De Espino Barajas and Juan Filadello Espino ("Debtors") seek to avoid a judicial lien in favor of Dyck-O'Neal, Inc. ("Creditor") in the sum of \$73,184.02 and encumbering residential real property located at 8572 7th Street, San Joaquin, CA 93660 ("Property").³ Doc. #17.

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 both Debtors in favor of Creditor in the amount of \$73,184.02 on December 13, 2021. Doc. #20, *Ex. A*. The abstract of judgment was issued on February 8, 2022 and recorded in Fresno County on February 14, 2022. *Id.* That lien attached to Debtors' interest in Property. *Id.*; Doc. #19.

As of the petition date, Property had an approximate value of \$251,000.00. *Id.*; Doc. #15, *Am. Sched. A/B*. Property does not appear to be encumbered by any mortgages. Doc. #1, *Sched. D*. Other than real property taxes, joint debtor Emilia De Espino Barajas believes that this is the only judgment lien encumbering Property. Doc. #19. Debtors claimed a \$300,000 homestead exemption in Property pursuant to Cal. Code Civ. Proc. § 704.730. Doc. #1, *Sched. C*.

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

Amount of Creditor's judicial lien	\$73,184.02
Total amount of unavoidable liens	+ \$0.00
Debtors' claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$373,184.02
Debtors' claimed value of interest absent liens	- \$251,000.00
Extent Creditor's lien impairs Debtors' exemption	= \$122,184.02

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	\$251,000.00
Total amount of unavoidable liens	- \$0.00
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$49,000.00)
Creditor's original judicial lien	- \$73,184.02
Extent Debtors' exemption impaired	= (\$122,184.02)

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

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order

shall include a copy of the abstract of judgment attached as an exhibit.

³ Debtors complied with Fed. R. Bankr. P. 7004(b)(3) by serving National Registered Agents, Inc. at 330 N. Brand Blvd. Ste. 700, Glendale, CA 91203 by regular U.S. mail on May 26, 2022. Doc. #21.

6. [21-12648](#)-B-7 **IN RE: LISA TOBAR**
[SAH-1](#)

RESCHEDULED HEARING RE: OBJECTION TO CLAIM OF WBKL VACATION
OWNERS ASSOCIATION, INC., CLAIM NUMBER 1
5-5-2022 [\[21\]](#)

LISA TOBAR/MV
SUSAN HEMB/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

Lisa A. Tobar ("Debtor") objects to Proof of Claim No. 1 filed by WBKL Vacation Owners Association, Inc. ("Claimant") on April 27, 2022 in the amount of \$3,455.83 and seeks that that it be disallowed in its entirety. Doc. #21. Debtor objects to the proof of claim under Federal Rule of Bankruptcy Procedure ("Rule") 3007 because the claim was untimely filed on April 27, 2022, after the claims bar date of March 17, 2022. *Id.*

Chapter 7 trustee Irma C. Edmonds ("Trustee") timely filed written opposition. Doc. #30. Trustee says that Claim 1 is a valid claim because Trustee can accept a tardily filed proof of claim pursuant to 11 U.S.C. § 726(a). *Id.*, citing *In re Bargdill*, 238 B.R. 711, 719 (Bankr. N.D. Ohio 1999) ("Section 502(b)(9) of the Bankruptcy Code provides that tardily filed claims are disallowed if an objection to the proof of claim is filed 'except to the extend [that such claim is] permitted under paragraph (1), (2), or (3) of section 726(a). . . ."). Trustee's position is that § 502(b)(9) is intended to only disallow tardily filed claims in chapter 13 reorganization cases. Doc. #30, citing *Bargdill*, 238 B.R. at 711. Since Claimant filed Claim 1 soon after the claims bar date, Trustee has authority to accept a tardy claim under § 726(a)(3). *Id.*

Claimant timely filed opposition because Trustee has authority to accept its late claim. Doc. #33.

This objection was set for hearing on June 28, 2022 with 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1) and will proceed as scheduled. Doc. #20. On May 31, 2022, the court rescheduled this hearing to June 30, 2022. Doc. #24. The court is inclined to OVERRULE the objection.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under § 501, is deemed allowed, unless a party in interest objects.

Rule 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

Here, Debtors object under Rule 3007, 11 U.S.C. §§ 502(b)(9), and 726(a)(1) because Claimant filed Claim 1 beyond the claims bar date. Doc. #21.

But as noted by Trustee and Claimant, Trustee has authority to accept the late filed claim under § 726(a)(3). Docs. #33; #30, citing *Bargdill*, 238 B.R. at 711.

Accordingly, the court is inclined to OVERRULE Debtors' objection and allow Claimant's late filed claim in its entirety.

7. [20-12349](#)-B-7 **IN RE: RICHARD GONZALEZ**
[DMS-1](#)

RESCHEDULED HEARING RE: MOTION TO SELL
5-27-2022 [[19](#)]

DAVID SOUSA/MV
SCOTT LYONS/ATTY. FOR DBT.
DAVID SOUSA/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee David M. Sousa ("Trustee") requests an order authorizing the sale of the estate's interest in a 2007 Chevrolet Silverado, a 2007 Honda Accord, and a 1969 Chevrolet C10 Truck (collectively "Vehicles") to Richard Marroquin Gonzalez ("Debtor") for

\$11,558.00, subject to higher and better bids at the hearing.
Doc. #19.

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

This motion was set to be heard on June 28, 2022 with 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(2). Doc. #20. On May 31, 2022, the hearing was rescheduled to June 30, 2022. Doc. #24. The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to the Debtor.

Per the schedules, Vehicles are listed with the following attributes:

Vehicle	Value	Exempt	Net
2007 Chevrolet Silverado	\$10,000	\$3,325	\$6,675
2007 Honda Accord (50% owned)	\$1,058	\$0	\$1,058
1969 Chevrolet C10 Truck	\$500	\$0	\$500
Totals	\$11,558	\$3,325	\$8,233

Docs. #1, *Sched. D*; #13, *Am. Sched. A/B, C*. The Vehicles do not appear to be encumbered by any liens or security interests. Doc. #1, *Sched. D*. Debtor claimed a \$1,058.00 exemption in the Chevrolet Silverado pursuant to Cal. Code Civ. Proc. ("CCP") § 704.010. *Id.*, *Sched. C*.

Trustee declares that he entered into an agreement with Debtor to purchase the Vehicles for combined sale price of \$11,558, less the CCP § 704.010 exemption of \$3,325, resulting in \$8,233 net proceeds for the bankruptcy estate subject to court approval. Doc. #21. Trustee has not agreed to pay a commission to any party in connection with the sale. *Id.* Trustee has researched similar vehicles and determined that the Vehicles have trade-in values ranging from \$8,325 to \$10,425 for the Chevrolet Silverado, \$1,125 to \$2,700 for the Honda Accord, and \$500 for the Chevrolet C10 Truck because it is nonoperational. *Id.* Since Trustee will not incur any transaction costs in selling the Vehicles, he believes this transaction is in the best interest of the bankruptcy estate. The sale price was determined by estimating Vehicle's fair market value of all three Vehicles: \$11,558. *Id.* After application of Debtor's \$3,325 exemption credit, \$8,233 in net proceeds will remain for the estate. *Id.*

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

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

Any party wishing to overbid must appear at the hearing and acknowledge that no warranties or representations are included with the sale; the Vehicles are being sold "as-is, where-is."

8. [22-10650](#)-B-7 **IN RE: DEREK/DANIELLE FITCHETT**
[DMG-1](#)

MOTION TO SELL
6-7-2022 [\[14\]](#)

DANIELLE FITCHETT/MV
D. GARDNER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

Derek Wallace Fitchett and Danielle Lynn Fitchett ("Debtors") request an order authorizing the sale of the estate's interest in real property located at 1517 N. Clifford St., Ridgecrest, CA ("Property") to Bradley and Shannon Romaker ("Proposed Buyers") for \$264,000, subject to higher and better bids at the hearing.

This matter will be called and proceed as scheduled. The court is inclined to DENY the motion because Debtors do not have standing to request authorization of this 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."

Though chapter 11 debtors-in-possession and chapter 13 debtors are authorized to exercise trustee sale powers under § 363, no such provision extends the same power to chapter 7 debtors. See §§ 1107(a); 1303. Chapter 7 debtors are not authorized to sell property of the chapter 7 bankruptcy estate. See *In re Robinson*, 74 B.R. 646, 648 (Bankr. E.D. Mo. 1987) ("By filing the bankruptcy petition, Chapter 7 debtors relinquish their right to sell their property. The Bankruptcy Code authorizes Trustees to sell the property of Chapter 7 bankruptcy estates. The Bankruptcy Code does not authorize Chapter 7 debtors to sell property of Chapter 7 bankruptcy estates.").

This motion was filed on less than 28 days' notice under Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Written opposition was not required and may be presented at the hearing. The court is inclined to DENY the motion.

9. [22-10457](#)-B-7 **IN RE: RICHARD SHOWALTER**
[EAT-1](#)

RESCHEDULED HEARING RE: MOTION FOR RELIEF FROM AUTOMATIC
STAY
5-23-2022 [[24](#)]

SIERRA PACIFIC MORTGAGE
COMPANY, INC./MV
PATRICK KAVANAGH/ATTY. FOR DBT.
CASSANDRA RICHEY/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.

Sierra Pacific Mortgage Company, Inc. ("Movant") seeks relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property commonly known as 17894 Saint Moritz Drive, Tehachapi, CA 93561 ("Property"). Doc. #24. Richard Ray Showalter ("Debtor") did not oppose.

This motion was set for hearing on June 28, 2022 with 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Doc. #25. On May 31, 2022, the court rescheduled the hearing to June 30, 2022. Doc. #30. The failure of the creditors, the Debtor, 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.

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.

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least 17 pre-petition payments totaling \$27,937.76, and 1 post-petition payment of \$1,728.13. Doc. #26 The movant has produced evidence that Debtor is delinquent at least \$248,961.14. *Id.* Additionally, since this is a chapter 7 case, Property is not necessary for an effective reorganization.

Lastly, the *Statement of Intention* indicates that Debtor intends to surrender Property. Doc. #1.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor has failed to make at least 18 payments to Movant and Debtor intends to surrender Property. No other relief is awarded.

10. [22-10168](#)-B-7 **IN RE: GROW PURE CITRUS, LLC**
[JRL-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-31-2022 [\[24\]](#)

RNS FARMS, LLC/MV
JEFFREY ROWE/ATTY. FOR DBT.
JERRY LOWE/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Raul Santellan and RNS Farms, LLC ("Movants") seek relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1) to prosecute a state court lawsuit against Grow Pure Citrus, LLC ("Debtor") and others. Doc. #24.

Debtor timely filed opposition. Doc. #42.

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

Debtor raises the following procedural objections:

1. Movants failed to file a *Relief from Stay Summary Sheet*, Form EDC 3-468 in violation of LBR 4001-1(a)(3).
2. Movants failed to serve Debtor and the United States Trustee ("UST") in violation of Fed. R. Bankr. P. ("Rule") 7004(a)(9) and (a)(10) [*sic*].
3. Movants' notice is defective because it claims to seek an order avoiding judicial lien but instead is actually seeking relief from the automatic stay.

Id.

First, Debtor is correct that Movants failed to initially include EDC 3-468. LBR 4001-1(a)(3) requires all motions for relief from stay to file and serve a separate Form EDC 3-468. Movant filed the form on June 27, 2022. Doc. #45. It was served electronically on the UST and mailed to Debtor's attorney and the chapter 7 trustee, but not the Debtor. Doc. #46.

Second, Debtor does not have standing to raise the service defect on UST. Rule 7004(b)(10) requires service on the UST "when the United States Trustee is the trustee in the case and service is made upon the United States trustee solely as trustee . . ." Here, the UST is not acting as the trustee, so Rule 7004(a)(10) does not apply. UST's interests are not being impaired by this motion, so electronic service on UST is sufficient in this instance. Docs. #27; #32; #36; #46. Movants have complied with the electronic service requirements of LBR 7005-1.

The court agrees, however, that Debtor was not properly served in accordance with Rule 7004(b)(9). Under Rule 7004(b)(9), Debtor must be served by mailing a copy of the motion documents to the debtor at the address shown in the petition or an address designated in a filed writing. Debtor was not served according to any of the five certificates of service. Docs. #21; #27; #32; #35; #46. Movants did comply with Rule 7004(g) by serving Debtor's attorney, but that alone is insufficient. This defect alone is fatal.

Third, the court agrees that Movants' notices are confusing. Movants filed five notices:

a. Notice #1: filed May 29, 2022. Doc. #19. It was captioned as a *Notice of Motion for Relief from the Automatic Stay* but the first paragraph states that Debtor will "move this court for an order avoiding a judicial lien." *Id.* Movants ultimately withdrew the original motion to which this notice relates. Doc. #34.

b. Notice #2: filed May 31, 2022. Doc. #25. As above, it was captioned as a stay relief motion, but the first paragraph claims it is a lien avoidance motion. *Id.*

c. Notice #3: filed June 1, 2022. Doc. #31. It again corrects other language, is captioned as a stay relief motion, but claims to be a lien avoidance motion. *Id.*

d. Notice #4: filed June 2, 2022. Doc. #35. This motion corrects the hearing date after the court rescheduled the hearing to June 30, 2022 on May 31, 2022. Doc. #28. This motion also accurately claims to be a stay relief motion but omits any written opposition language or the court website. Doc. #35.

Both the lien avoidance references and the large quantity of notices are confusing, and Movants left out necessary notice language in the last corrected version. LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the court website and the above disclosure are not included in the fourth notice of hearing. Doc. #35.

Additionally, LBR 9014-1(d)(3)(B) requires the movant to notify respondents that any opposition to the motion must be in writing and must be filed with the court at least 14 days before the hearing date. This language was in the first three notices but omitted from the fourth. *Id.*

Fourth, the amended motion reuses the docket control number of the first withdrawn motion. 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.

Since Movants withdrew their first stay relief motion, the amended motion should have used a different DCN.

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

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

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM CO-DEBTOR STAY
4-25-2022 [\[31\]](#)

U.S. BANK TRUST NATIONAL
ASSOCIATION/MV
ERICA LOFTIS/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 matter was originally heard on May 25, 2022, continued to June 28, 2022, and rescheduled to June 30, 2022. Docs. #60; #63; #69.

U.S. Bank Trust National Association as Trustee of the Chalet Series IV Trust ("Movant") sought relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) as to real property commonly known as 3708 Sue Lin Way, Bakersfield, CA 93309 ("Property"). Doc. #31. Movant also requested this order 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*, did not oppose. However, 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 served because he was appointed after the motion was filed. Doc. #40. The hearing was continued so that Trustee could be properly served. Doc. #63. Movant served Trustee with a copy of the motion on May 26, 2022. Doc. #62. Thereafter, the motion was rescheduled on May 31, 2022 and Trustee was notified of the rescheduled hearing. Doc. #69.

This motion will be GRANTED.

At the last hearing, the court entered the defaults of all parties except Trustee pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Since then, Trustee has had an opportunity to respond. The failure of Trustee to file written opposition at least 14 days prior to the continued hearing 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, Trustee's default is 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 is the holder of a note executed by Alan L. Babb⁴ and dated October 6, 2003 in the amount of \$65,000.00 and secured by a deed of trust encumbering Property. Docs. #33; #34, Exs. 1-3.

Babb executed an unauthorized grant deed on October 19, 2018, which conveyed an interest in Property to Debtor and a third party named Michelle Valencia. *Id.*, Ex. 4. Babb and Valencia subsequently filed the following bankruptcies:

Case No.	Name	Filed	Closed	Result
10-63437	Alan Lee Babb	11/19/2010	03/25/2011	Discharge
17-11868	Allan L Babb	05/12/2017	10/11/2017	Dismissed
17-10851	Allan L Babb	03/10/2017	05/10/2017	Dismissed
18-10499	Allan L Babb	02/16/2018	07/12/2018	Dismissed
18-12467	Allan L Babb	06/19/2018	11/13/2018	Dismissed
21-11929	Michelle Valencia	08/02/2021	12/13/2021	Dismissed
21-12816	Michelle Valencia	12/17/2021	03/11/2022	Dismissed

Id., *Exs. 5-11*. During this time, Babb missed the following payments and incurred a \$55,922.87 delinquency:

Delinquent Payments	Amount
5 payments (10/2017-02/2018)	\$2,074.85
4 payments (03/2018-06/2018)	\$1,767.44
16 payments (07/2018-10/2019)	\$7,703.44
22 payments (11/2019-08/2021)	\$10,142.66
7 payments (09/2021-03/2022)	\$3,464.51
1 payment (04/2022)	\$499.47
Late charges	\$63.98
Attorney fees	\$2,056.48
Foreclosure expenses	\$2,423.09
Payment setup fee	\$15.00
Prior Servicer Corporate Advance	\$6,732.62
Prior Servicer Late Charges	\$109.66
NSF Fees	\$75.00
Escrow Deficiency for funds advanced	\$15,383.83
Projected Escrow Shortage	\$2,172.76
Bankruptcy Attorney Fee	\$1,050.00
Bankruptcy Filing Fee	\$188.00
Total Delinquencies	\$55,922.87

Doc. #33. Based on the moving papers and the record, Babb has failed to make at least fifty-five (55) payments. Doc. #33. Movant has produced evidence that Babb is delinquent at least \$75,455.09. *Id.* Further, Debtor's interest in Property was obtained through an unauthorized grant deed with third party Valencia. Babb, Valencia, and Debtor altogether have filed eight bankruptcies.

Since the last hearing, the court granted another motion for § 362(d)(4) relief with respect to a different parcel real property in favor of Reverse Mortgage Funding LLC ("RMF") and found that Debtor filed the petition as part of a scheme to delay, hinder or defraud creditors by transferring a 10% ownership interest in that property without the consent of RMF. Docs. #74; #77.

Here, the court also finds that Debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or some part of ownership in the Property without the consent of Movant, and that multiple parties have filed multiple

bankruptcies purporting to affect Property in a relatively short amount of time.

Accordingly, this motion will be GRANTED, and the court will order terminating the automatic stay with respect to Property for cause under § 362(d)(1). Since it is unclear whether Debtor has an equity interest in Property because the debt owed to Movant does not exceed the scheduled value of Property, and because the court is already granting relief under § 362(d)(1), the request under § 362(d)(2) will be DENIED AS MOOT.

The court will further order, pursuant to § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud Movant that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor, and multiple bankruptcy filing affecting such real property. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order.

Based on Debtor's apparent bad faith and the likelihood that another petition purporting to affect Property will be filed soon, cause exists to waive the 14-day stay of Rule 4001(a)(3).

⁴ The unauthorized grant deed and some of the bankruptcy state "Alan L. Babb," while others state "Allan L. Babb." Doc. #34, Exs. 1-9.

12. [22-10783](#)-B-7 **IN RE: MICHAEL VILLANUEVA BALANGA AND TRICIA BALANGA**

RESCHEDULED HEARING RE: ORDER TO SHOW CAUSE - FAILURE TO PAY
FEES
5-23-2022 [\[13\]](#)

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

This matter will be called and proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the *Order to Show Cause*. See Doc. #13.

13. [22-10587](#)-B-7 **IN RE: GABRIEL GOMEZ**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-16-2022 [\[12\]](#)

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

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue an order.

Chapter 7 trustee Peter L. Fear ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on May 16, 2022. Doc. #12. This motion was originally set for June 28, 2022, but on June 14, the court rescheduled the hearing to June 30, 2022. Docs. #13; #18.

Gabriel Contreras Gomez ("Debtor") timely written opposition. Doc. #15. Debtor did not attend the hearing because Debtor's attorney had a conflict and could not attend the meeting, but Debtor plans to attend the continued hearing on July 18, 2022 at 3:00 p.m. *Id.* Debtor's attorney, T. Mark O'Toole, declares that he had a criminal hearing in Stockton that conflicted with the May 16, 2022 meeting. Doc. #16. Mr. O'Toole attempted to move the hearing time but was unsuccessful because Trustee's calendar was full. *Id.* Mr. O'Toole intends to attend the continued meeting. *Id.*

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for July 18, 2022 at 3:00 p.m. See Doc. #13. If Debtor fails to appear at testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

14. [22-10594](#)-B-7 **IN RE: MELISSA GARCIA TARIN**
[PFT-1](#)

RESCHEDULED HEARING RE: NOTICE OF HEARING ON TRUSTEE'S
MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A)
MEETING OF CREDITORS
6-6-2022 [[18](#)]

MELISSA GARCIA TARIN/ATTY. FOR MV.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue an order.

Chapter 7 trustee Peter L. Fear ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on May 16, 2022. Doc. #15. This motion was originally set for June 28, 2022, but on June 7, the court rescheduled the hearing to June 30, 2022. Docs. #16; #19.

Melissa Garcia Tarin ("Debtor"), *pro se*, timely filed form opposition. Doc. #18. However, the opposition does not include a declaration stating the reasons this case should not be dismissed, nor the reasons Debtor failed to appear at the meeting.

Notwithstanding Debtor's failure to include those reasons, the motion will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for July 18, 2022 at 3:00 p.m. See Doc. #16. If Debtor fails to appear at testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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