



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

**HONORABLE RENÉ LASTRETO II
Department B – Courtroom #13
Fresno, California**

Hearing Date: Wednesday, July 12, 2023

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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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.

Post-Publication Changes: 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 any possible updates.

9:30 AM

1. [22-12101](#)-B-13 **IN RE: ANGEL ARELLANO**
[SL-1](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
6-8-2023 [\[49\]](#)

SCOTT LYONS/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.

Scott Lyons ("Applicant"), counsel for Angel Arellano ("Debtor"), requests compensation in the sum of \$8,380.44 on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to 11 U.S.C. § 330. Doc. #49. This amount consists of \$8,097.50 in fees and \$282.94 in expenses from December 7, 2022 through June 8, 2023. *Id.*

Debtor executed a statement of consent dated June 8, 2023 indicating that Debtor has reviewed the fee application and has no objections to the same. *Id.* § 9(7), at 5.

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) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo 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.

Section 3.05 of the *Chapter 13 Plan* dated December 23, 2022, confirmed March 10, 2023, provides that Debtor paid Applicant \$1,500.00 prior to the filing of the case, and subject to court approval, Applicant will be paid \$12,000.00 through the plan by filing and serving a motion in

conformance with 11 U.S.C. §§ 329 & 330, and Rules 2002, 2016-17. Docs. #13; #35.

This is Applicant's first interim fee application. Doc. #49. Applicant's firm provided 42.64 billable hours of legal services at the following rates, totaling **\$8,097.50** in fees:

Professional	Rate	Hours	Fees
Scott Lyons (no charge)	\$0	0.50	\$0.00
Scott Lyons	\$400	1.43	\$572.00
Louis Lyons	\$350	6.72	\$2,352.00
Sylvia Gutierrez	\$150	34.49	\$5,173.50
Total Hours & Fees		42.64	\$8,097.50

Id.; *Ex. B*, Doc. #51. Applicant also incurred **\$282.94** in expenses:

Postage, Reproduction, Stationery	\$213.94
Filing fees	\$32.00
Credit Report and CourtCall	\$37.00
Total Expenses	\$282.94

Id. These combined fees and expenses total **\$8,380.44**. After application of the \$1,500.00 in pre-petition payments, Applicant requests \$6,880.44 to be paid through the plan.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services here included, without limitation: (1) preparing schedules and plan, (2) responding to objections to confirmation of the plan and confirming the plan; and (3) preparing and filing this fee application (SL-1). *Ex. A*, Doc. #51. The court finds these services and expenses actual, reasonable, and necessary. Debtor has consented to payment of the proposed fees and expenses. Doc. #49.

Accordingly, this motion will be GRANTED. Applicant will be awarded \$8,097.50 in fees and \$282.94 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review under § 330. After applying the \$1,500.00 prepetition retainer, the chapter 13 trustee, in the trustee's discretion, will be authorized to pay Applicant \$6,880.44 in conformance with the confirmed chapter 13 plan for fees and expenses from December 7, 2022 through June 8, 2023.

2. [23-10712](#)-B-13 **IN RE: SARAH FLORES GARZA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-12-2023 [[36](#)]

DISMISSED 6/14/23

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court entered an order dismissing this case on June 14, 2023.
Doc. #36. Accordingly, this motion will be DENIED AS MOOT.

3. [23-10724](#)-B-13 **IN RE: ALMA ZAVALA**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
5-23-2023 [[16](#)]

MARCUS TORIGIAN/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Alma Sulema Zavala ("Debtor") filed the *First Amended Chapter 13 Plan* on June 23, 2023, which is not yet set for hearing. Doc. #25. The chapter 13 trustee's objection to the *Chapter 13 Plan* dated April 10, 2023 will be OVERRULED AS MOOT. Debtor is directed to set the amended plan for hearing pursuant to Local Rule of Practice 3015-d(1).

4. [19-10528](#)-B-13 **IN RE: ANTHONY/MELISSA CLARKE**
[PBB-2](#)

MOTION TO MODIFY PLAN
5-23-2023 [[34](#)]

MELISSA CLARKE/MV
PETER BUNTING/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.

Anthony Michael Clarke and Melissa Gail Clarke (collectively,
"Debtors") move for an order confirming the *First Modified Chapter 13*
Plan dated May 23, 2023. Doc. #34.

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

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

Here, the 60-month, 28%-dividend plan proposes that Debtors will pay
an aggregate of \$103,012.24 in the first 50 months, then \$1,654.00 per
month for 10 months. Doc. #36. Additionally, Don Roberto Jewelers
shall receive payments of \$100.00 per month beginning July 2023. *Id.*
Debtors' *Amended Schedules I & J* dated May 23, 2023 indicate receipt
of \$1,654.64 in monthly net income, which is sufficient to fund the
proposed plan payments. Doc. #32.

In contrast, the operative *Chapter 13 Plan* dated February 15, 2019
provides for 60 monthly payments of \$2,050.00 per month with a 14%

dividend to allowed, non-priority unsecured claims. Docs. #2, #25. No party in interest opposed.

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

5. [23-11046](#)-B-13 **IN RE: KATHERINE J SCONIERS STANPHILL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-21-2023 [[16](#)]

STEPHEN LABIAK/ATTY. FOR DBT.

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 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*.

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

6. [19-14666](#)-B-13 **IN RE: JAMES CULVER**
[MHM-1](#)

MOTION TO DISMISS CASE
6-8-2023 [[44](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(6) and (c)(4) material default with respect to a term of a confirmed plan by failing to make payments due under the plan and termination of a confirmed plan by

reason of the occurrence specified other than completion of payments. Doc #44. James Lucian Culver ("Debtor") did not oppose.

Unless the trustee's motion is withdrawn before the hearing, the motion will be GRANTED without oral argument for cause shown.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, Debtor had a 36-month plan term. The 36th month was November 2022. As of June 08, 2023, the total claims filed require an aggregate payment of \$10,556.81 but Debtor has only paid \$9,722.26. Doc. #46. The remaining claims, plus Trustee compensation that need to be paid under the plan total \$834.55.

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)(6) and (c)(8) for failure to complete the terms of the confirmed plan.

Trustee has reviewed the schedules and determined that Debtor's assets are over encumbered and are of no benefit to the estate. Doc. #44. Since there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion, best serves the interests of creditors and the estate.

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

7. [23-11074](#)-B-13 **IN RE: PATRICK BRADDOCK**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-23-2023 [[15](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.
\$313.00 FILING FEE PAID 6/26/23

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid in full. Accordingly, the order to show cause will be VACATED.

11:00 AM

1. [21-11001](#)-B-11 **IN RE: NAVDIP BADHESHA**
[RMB-16](#)

PRE-TRIAL CONFERENCE RE: OBJECTION TO CLAIM OF CALIFORNIA
DEPARTMENT OF TAX AND FEE ADMINISTRATION, CLAIM NUMBER 8
4-11-2022 [[241](#)]

NAVDIP BADHESHA/MV
MATTHEW RESNIK/ATTY. FOR DBT.
CONT'D TO 8/2/23 PER ECF ORDER #331

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

DISPOSITION: Continued to August 2, 2023 at 11:00 a.m.

NO ORDER REQUIRED.

The court entered an order continuing this pre-trial conference to
August 2, 2023 at 11:00 a.m. pursuant to the parties' stipulation.
Doc. #331.

2. [17-14112](#)-B-13 **IN RE: ARMANDO NATERA**
[20-1035](#) [ZM-3](#)

MOTION FOR JUDGMENT ON THE PLEADINGS
6-14-2023 [[451](#)]

NATERA V. BARNES ET AL
JACOB EATON/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 23, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the parties' request, this motion will be CONTINUED to
August 23, 2023 at 11:00 a.m. so that the debtor can file a motion to
approve a settlement agreement by July 26, 2023 to be heard on August
23, 2023 at 9:30 a.m. Doc. #459. If the motion is not filed, the
parties will file a joint status report 14 days before the continued
hearing and the Wards will file a reply 7 days before the hearing.

3. [22-11127](#)-B-7 **IN RE: SCOTT FINSTEIN**
[22-1017](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-19-2022 [[1](#)]

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG V. FINSTEIN
KAREL ROCHA/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

4. [22-11127](#)-B-7 **IN RE: SCOTT FINSTEIN**
[22-1017](#) [KR-3](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
6-2-2023 [[64](#)]

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG V. FINSTEIN
KAREL ROCHA/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

National Union Fire Insurance Company of Pittsburgh, PA, as assignee and subrogee of Lancaster Hospital Corporation dba Palmdale Regional Medical Center ("Plaintiff") seeks entry of a default judgment against debtor Scott Allen Finstein ("Defendant") finding that Defendant participated in a scheme to defraud Plaintiff, and therefore, a \$689,836.19 debt owed by Defendant to Plaintiff is non-dischargeable. Doc. #64.

Defendant did not oppose.

This matter will be called and proceed as scheduled. The court is inclined to GRANT this motion.

Plaintiff's motion was filed on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. Plaintiff served the summons and complaint on Defendant on August 22, 2022, but proof of service was not timely filed. Doc. #11. Ordinarily, Plaintiff would have been required to request a reissued summons and prove service but Defendant filed an answer to the complaint on August 26, 2022. Doc. #7. The answer did not raise a service defect, so Defendant waived that defect. Fed. R. Bankr. P. ("Rule") 7004, as incorporated by Fed. R. Civ. P. ("Civ. Rule") 12(b)(5) & (h)(1).

Defendant's original answer and first amended answer (Docs. #7, #23) were stricken for procedural deficiencies. Docs. #20, #33. Defendant did not file a second amended answer.

Plaintiff served the following documents on Defendant: (i) the request for entry of default on April 18, 2023, and (ii) this motion and its supporting papers on June 2, 2023. Docs. #51, #68.

The court entered Defendant's default on April 19, 2023 under Civ. Rule 55(a) and directed Plaintiff to apply for a default judgment and set this "prove up" hearing within 30 days of entry of default. Doc. #55. Plaintiff applied for entry of a default judgment on June 2, 2023 but it was not timely because it was filed 44 days after the default was entered. Docs. ##64-69.

JURISDICTION

The United States District Court for the Eastern District of California has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) because this is a case arising under title 11. This court has jurisdiction to hear and determine this matter by reference from the District Court under 28 U.S.C. § 157(a). This is a "core" proceeding under 28 U.S.C. § 157(b)(2)(I) (determinations as to the dischargeability of particular debts). Venue is proper pursuant to 28 U.S.C. § 1409(a) because this adversary proceeding arises in a bankruptcy case pending in this judicial district.

BACKGROUND

Defendant filed chapter 7 bankruptcy on July 1, 2022. Case No. 22-11127 (Bankr. E.D. Cal.). Plaintiff initiated this adversary proceeding on August 19, 2022, alleging that Defendant was involved in a scheme to defraud Plaintiff during his employment with Lancaster Hospital Corporation d/b/a Palmdale Regional Medical Center ("Palmdale"). Doc. #1.

Prior to filing bankruptcy, Defendant was employed as the Director of Plant Operations at Palmdale. Leibowitz Decl. ¶ 21, Doc. #66. In his position as Director of Plant Operations, Defendant was responsible for coordinating and overseeing the construction and maintenance work performed at Palmdale, including work performed by outside vendors. *Id.* ¶ 22. Defendant was also responsible for reviewing invoices submitted by vendors and issuing authorizations for Palmdale to pay such invoices. *Id.* ¶ 23.

Fraudulent invoices

From 2008 to 2019, Plaintiff contends that Defendant engaged in a fraudulent scheme with third parties whereby he approved invoices that resulted in payments to them despite Defendant knowing that such individuals and/or their business entities did not perform the services or provide the products to Palmdale listed on the invoices. *Id.* ¶ 24.

RM Power

Defendant retained "RM Power" to perform services for Palmdale. However, RM Power is and was the business alias of an individual named Richard Yanik. *Id.* ¶¶ 25-26. Defendant and Yanik were personal friends. *Id.* ¶ 27. From 2009 through 2018, Yanik, under the alias RM Power, provided invoices for various services that he represented had been performed, including carpentry, storm drain cleanouts, electrical work, and valve replacement. *Id.* ¶ 24. Neither Yanik nor anyone else performed the services described in RM Power's invoices. *Id.* ¶ 29.

Plaintiff alleges that Defendant knew that Yanik did not perform the services described in RM Power's invoices. *Id.* ¶ 30. Nevertheless, Defendant approved the invoices and authorized Palmdale to pay RM Power's invoices despite knowing that they contained false information and that the services had not been performed or provided. *Id.* ¶ 31. Upon receiving Defendant's approval of the invoices, Palmdale paid RM Power (and therefore, Yanik) for the amounts stated on the invoices in the combined amount of \$66,816.33. *Id.* ¶¶ 32-33.

MEKR

Another vendor retained by Defendant was identified as "MEKR Advance Systems" ("MEKR"). *Id.* ¶ 34. MEKR was also a business alias of Yanik. *Id.* ¶ 35. From 2011 through 2018, Yanik, under the alias of MEKR, provided invoices to Palmdale for various services that he represented had been performed and had benefited Palmdale, including coil cleaning, cooling tower cleaning, infrared inspections, automatic transfer switch maintenance, filter changes, line isolation testing, compressor replacement, master alarm replacement, fire pump replacement, and valve replacements. *Id.* ¶ 36. However, neither Yanik nor anyone else performed the services described in MEKR's invoices. *Id.* ¶ 37.

Plaintiff alleges that Defendant knew that Yanik did not perform the services described in MEKR's invoices. *Id.* ¶ 38. Nevertheless, Defendant approved the invoices and authorized Palmdale to pay MEKR's invoices despite knowing that they contained false information and that the services had not been performed or provided. *Id.* ¶ 39. Upon receiving Defendant's approval of the invoices, Palmdale paid MEKR (and therefore, Yanik) for the amounts stated on the invoices in the combined amount of \$187,097.74. *Id.* ¶¶ 40-41.

Patriot

Another vendor retained by Defendant was identified as "Patriot Building Services" ("Patriot"). *Id.* ¶ 42. Patriot is and was the business alias of an individual named Thomas Mathis. *Id.* ¶ 43. From 2011 through 2018, Mathis, under the alias of Patriot, provided invoices to Palmdale for various products, supplies, and services that he represented had been performed and had benefited Palmdale, including line isolation testing, condensate for steam boilers, return line treatment, oxygen scavengers, degreaser, and hand cleaner. *Id.*

¶ 44. Neither Mathis nor anyone else performed the services described in Patriot's invoices. *Id.* ¶ 45.

Plaintiff alleges that Defendant knew that Mathis did not perform the services that were described in Patriot's invoices. *Id.* ¶ 46. Nevertheless, Defendant approved the invoices and authorized Palmdale to pay Patriot's invoices despite knowing that they contained false information and that the services had not been performed or provided. *Id.* ¶ 47. Upon receiving Defendant's approval of the invoices, Palmdale paid Patriot (and therefore, Mathis) for the amounts stated on the invoices in the combined amount of \$147,573.09. *Id.* ¶¶ 48-49.

PBS

Another vendor retained by Defendant was identified as "PBS Fire Protection Services" ("PBS"). *Id.* ¶ 50. PBS was also a business alias of Mathis. *Id.* ¶ 51. From 2011 through 2018, Mathis, under the alias of PBS, provided invoices to Palmdale for various services that he represented had been performed and had benefited Palmdale, including monthly testing of the fire alarm system, line isolation testing, telescoping replacement, ground fault repair, and valve and pump replacements. *Id.* ¶ 52. Neither Mathis nor anyone else performed the services described in PBS' invoices. *Id.* ¶ 53.

Plaintiff alleges that Defendant knew that Mathis did not perform the services that were described in PBS' invoices. *Id.* ¶ 54. Nevertheless, Defendant approved the invoices and authorized Palmdale to pay Patriot's invoices despite knowing that they contained false information and that the services had not been performed or provided. *Id.* ¶ 55. Upon receiving Defendant's approval of the invoices, Palmdale paid PBS (and therefore, Mathis) for the amounts stated on the invoices in the combined amount of \$262,455.00. *Id.* ¶¶ 56-57.

Investigation

On January 3, 2019, Defendant approved Invoice No. 20910 from RM Power, allegedly pertaining to electrical services in the amount of \$10,149.66. *Id.* ¶ 58. Defendant stated to a coworker that he would request RM Power to reduce the invoice to an amount less than \$10,000 so that it would not raise concerns with Palmdale's management. *Id.* ¶ 59. As a result of this conversation, Palmdale initiated an investigation into the invoices, determined that RM Power never rendered such services, and broadened the investigation to include all invoices approved by Defendant. *Id.* ¶¶ 60, 62.

Defendant subsequently resigned from his employment with Palmdale on January 12, 2019. *Id.* ¶ 63.

Palmdale retained Crowe LLP ("Crowe") to perform a forensic investigation into the vendors and invoicing handled by Defendant. *Id.* ¶ 64. Crowe's investigation determined that Defendant authorized payment of invoices for services that he knew were not performed and for products he knew Palmdale never received. *Id.* ¶ 65.

Crowe determined that Palmdale suffered a loss in the total amount of \$583,942.16 because of the false invoicing scheme. *Id.* ¶ 67. Palmdale paid Crowe \$105,544.03 for Crowe's services, further contributing to Palmdale's loss. *Id.* ¶ 68. A copy of Crowe's report is attached as an exhibit to this motion. *Ex. C*, Doc. #69. Copies of invoices are attached to the report.

In total, Crowe determined that Defendant had authorized \$1,070,662.65 in payments to RM Power, MEKR, Patriot, PBS, and a fifth entity, Horn's Backflow Plumbing Services. *Id.* at 13. However, Crowe determined that Plaintiff suffered losses of \$663,942.16 only.

Indemnification

Palmdale's parent company, Universal Health Services, Inc. ("Universal"), has an insurance policy from Plaintiff for indemnity against employee theft. *Ex. D*, Doc. #69. Under this policy, Universal submitted a Proof of Loss in the amount of \$663,942.16. Plaintiff indemnified Universal less a \$50,000 deductible for the losses that Palmdale sustained as a result of the false invoicing scheme perpetrated by Defendant, Yanik, Mathis, and others, and became subrogated to Palmdale and Universal. *Id.*; Doc. #66, ¶¶ 70-72. Plaintiff also verified that Universal paid \$105,544.03 for the Crowe report in connection with investigating Defendant's fraud. In exchange, Universal executed an *Assignment and Release* on behalf of itself and Palmdale to sell, assign, transfer, convey, and deliver to Plaintiff all rights, claims, title and interest which Universal and Palmdale have against Defendant as provided in the policy, thus entitling Plaintiff to pursue recovery under the agreement. *Ex. D*, Doc. #69. Plaintiff applied a \$50,000 deductible in March 2020 and a \$1,000 deductible in April 2020 and forwarded funds in the amounts of \$613,942.16 and \$50,000 to Universal. *Id.* The parties signed an addendum noting that the intent of the assignments was to transfer claims owned by Lancaster Hospital Corporation d/b/a Palmdale to Plaintiff. *Id.*

As a result of Defendant's actions, Palmdale, and thus Plaintiff, was damaged in the amount of at least \$583,942.16 plus investigative costs of \$105,544.03, resulting in total compensatory damages of \$689,486.19. Additionally, Plaintiff seeks costs of suit incurred in the amount of \$350.00, for a total of \$689,836.19.

Plaintiff now requests this debt be deemed non-dischargeable.

DISCUSSION

I.

Civ. Rule 55, as incorporated by Rule 7055, governs default judgments. "To obtain a default judgment of nondischargeability of a loan debt, a two-step process is required: (1) entry of the party's default (normally by the clerk), and (2) entry of default judgment." *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006), citing *Brooks v.*

United States, 29 F.Supp 2d 613, 618 (N.D. Cal. 1998), *aff'd mem.*, 162 F.3d 1167 (9th Cir. 1998). "[A] default establishes the well-pleaded allegations of a complaint unless they are . . . contrary to facts judicially noticed or to uncontroverted material in the file." *Anderson v. Air West Inc. (In re Consol. Pretrial Proceedings in Air West Secs. Litig.)*, 436 F.Supp 1281, 1285-86 (N.D. Cal. 1977), citing *Thomson v. Wooster*, 114 U.S. 104, 114 (1885). Thus, a default judgment based solely on the pleadings may only be granted if the factual allegations are well-pled and only for relief sufficiently asserted in the complaint. *Benny v. Pipes*, 799 F.2d 487, 495 (9th Cir. 1986), *amended on other grounds*, 807 F.2d 1514 (9th Cir. 1987).

The court has broad discretion to require that a plaintiff prove up a case and require the plaintiff to establish the necessary facts to determine whether a valid claim exists supporting relief against the defaulting party. Entry of default does not automatically entitle a plaintiff to a default judgment. *Beltran*, 182 B.R. at 823; *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) ("Rule 55 gives the court considerable leeway as to what it may require as a prerequisite to entry of a default judgment.").

II.

11 U.S.C. § 523(a)(2) excepts from discharge any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition.

The elements required are: (1) the debtor made a representation; (2) the debtor knew at the time the representation was false; (3) the debtor made the representation with the intention and purpose of deceiving the creditor; (4) the creditor relied on the representation; and (5) the creditor sustained damage as the proximate result of the representation. *Apt. v. Japra (In re Apte)*, 96 F.3d 1319, 1322 (9th Cir. 1996); *In re Kirsh*, 973 F.2d 1454, 1457 (9th Cir. 1992).

Failure to disclose material facts constitutes a fraudulent omission under § 523(a)(2)(A) if the debtor was under a duty to disclose and the debtor's omission was motivated by an intent to deceive. *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1246 (9th Cir. 2001); *In re Howarter*, 95 B.R. 180, 187 (Bankr. S.D. Cal. 1989). Although the creditor must show actual intent, such intent may be inferred from the totality of the surrounding circumstances. *Dakota Steel, Inc.*, 284 B.R. 711, 721 (Bankr. N.D. Cal. 2002); *In re Gabau*, 151 B.R. 227, 234 (Bankr. N.D. Cal. 1993) ("[E]ither actual knowledge of the falsity of a statement, or reckless disregard for its truth, satisfies the scienter requirement for nondischargeability of a debt."). Such determination does not need to be supported by a specific finding of moral turpitude. *Cowen v. Kennedy (In re Kennedy)*, 108 F.3d 1015, 1018 (9th Cir. 1997).

Additionally, a creditor seeking a non-dischargeability determination under § 523(a)(2)(A) must also show that the creditor was justified in relying on the debtor's fraudulent conduct in obtaining the money, property, or services. *Field v. Mans*, 516 U.S. 59, 73-76 (1995). Reliance must be justifiable but need not reach the level of "reasonableness." *Dakota*, 284 B.R. at 721. The creditor must also show that the debtor's fraud was the proximate cause of the damage to the creditor. *Field v. Mans*, 516 U.S. at 61, 64.

Here, Defendant submitted invoices for payment to Palmdale that he knew to be for products and/or services that had not been completed or provided. By submitting these invoices, Defendant represented that they were for valid work and products. Instead, these representations were false and fraudulent, and Defendant knew that to be the case when the invoices were submitted. By making these false representations, Defendant intended to defraud Palmdale by inducing Palmdale to pay the fraudulent invoices. Defendant, as an employee of Palmdale, had a fiduciary duty to disclose that the invoices were fraudulent. Defendant chose not to do so.

As Defendant's employer, Palmdale justifiably relied on Defendant's representations regarding the invoices and paid them. Palmdale suffered damages and Plaintiff indemnified Palmdale in the amount of those damages. As a result, Plaintiff suffered damages of at least \$583,942.16 plus \$105,544.03 in investigative costs. After the \$350.00 cost of filing the complaint, Plaintiff has suffered total damages in the sum of at least \$689,836.19 by indemnifying Palmdale for its losses incurred as the result of Defendant's fraud.

Under 11 U.S.C. § 509, an entity that has secured a claim of a creditor against the debtor and pays such claim is subrogated to the rights of such creditor to the extent of such payment.

CONCLUSION

Defendant failed to respond to the allegations in the complaint. Under Civ. Rule 8(d), failure to respond to Plaintiff's allegations in the complaint are deemed admitted. *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977). Therefore, the debt owed by Defendant to Plaintiff as assignee and subrogee of Palmdale will be deemed nondischargeable pursuant to 11 U.S.C. § 523(a)(2). Defendant made representations that he knew to be false at the time such representations were made with the intention and purpose of deceiving Palmdale. Palmdale reasonably relied on those representations and suffered damages of at least \$689,836.19.

This matter will be called and proceed as scheduled. The court is inclined to GRANT this motion.

5. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[22-1025](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-24-2022 [[1](#)]

VALLEY TRANSPORTATION, INC. V. MENDOZA
RILEY WALTER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Adversary proceeding dismissed without prejudice.

ORDER: The court will issue an order.

On May 4, 2023, the court approved the parties' stipulation to extend the injunction issued pursuant to 11 U.S.C. § 105(a) extending the automatic stay to non-debtor Deborah Simpson with respect to a state court lawsuit until the earlier of June 27, 2023 or the entry of an order approving the debtor's plan of reorganization. Doc. #72. June 27, 2023 has passed, so this adversary proceeding appears to be moot.

The court has been advised that the parties have settled their dispute and that settlement included dismissal of the underlying bankruptcy. The court issued an order dismissing the underlying bankruptcy on June 28, 2023. Since there is no reason to continue with the adversary proceeding, it will be DISMISSED WITHOUT PREJUDICE pursuant to Fed. R. Civ. P. 41(a)(2), *as incorporated by* Fed. R. Bankr. P. 7041.

Accordingly, the status conference will be dropped and taken off calendar. This adversary proceeding may be administratively closed when appropriate.

6. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[23-1024](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
5-11-2023 [[1](#)]

RUBIO V. MADERA COMMUNITY HOSPITAL
EILEEN GOLDSMITH/ATTY. FOR PL.
CONTINUED TO 8-30-23 PER DOC. #24

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

DISPOSITION: Continued to August 30, 2023 at 11:00 a.m.

NO ORDER REQUIRED.

The court issued an order continuing the hearing on this status

conference to August 30, 2023 at 11:00 a.m. pursuant to the parties' joint motion. Doc. #24.

7. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[23-1024](#) [WJH-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
6-9-2023 [[11](#)]

RUBIO V. MADERA COMMUNITY HOSPITAL
RILEY WALTER/ATTY. FOR MV.
CONTINUED TO 8-30-23 PER DOC. #24

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

DISPOSITION: Continued to August 30, 2023 at 11:00 a.m.

NO ORDER REQUIRED.

The court issued an order continuing the hearing on this motion to August 30, 2023 at 11:00 a.m. pursuant to the parties' joint motion. Doc. #24.

8. [22-10974](#)-B-7 **IN RE: FRANCISCO SAMANIEGO**
[23-1019](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-24-2023 [[1](#)]

FEAR V. MEZA
GABRIEL WADDELL/ATTY. FOR PL.

NO RULING.

9. [22-10974](#)-B-7 **IN RE: FRANCISCO SAMANIEGO**
[23-1019](#) [FW-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
6-8-2023 [[15](#)]

FEAR V. MEZA
GABRIEL WADDELL/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.

Chapter 7 trustee Peter L. Fear ("Plaintiff") seeks entry of a default judgment against Marie Meza ("Defendant") finding that Defendant has no interest in real property located at 31761 Apache Road, Coarsegold, CA 93614 ("Property") nor any proceeds from the sale of Property. Doc. #15. Additionally, Plaintiff seeks a determination that Property is property of the bankruptcy estate, proceeds from the sale of Property are property of the bankruptcy estate, and such proceeds may be disbursed pursuant to the normal chapter 7 distribution process. *Id.*

Defendant did not oppose.

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 Defendant 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, Defendant's default is 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.

In accordance with Fed. R. Bankr. P. ("Rule") 7004(b)(1) and (b)(1), Plaintiff served the following documents on Defendant: (i) the complaint and summons on March 2, 2023, (ii) the request for entry of default on May 17, 2023, and (iii) this motion and its supporting papers on June 8, 2023. Docs. #6, #11, #21.

The court entered Defendant's default on May 19, 2023 under Fed. R. Civ. P. ("Civ. Rule") 55(a) and directed Plaintiff to apply for a default judgment and set this "prove up" hearing within 30 days of entry of default. Doc. #12. Plaintiff timely applied for entry of a default judgment on June 8, 2023. Docs. ##15-20.

REQUEST FOR JUDICIAL NOTICE

Plaintiff requests for the court to take judicial notice of certain documents filed in the underlying bankruptcy proceeding, Case No. 22-10974-B-7 (Bankr. E.D. Cal.) ("Bankruptcy Case"). Doc. #19. The court may take judicial notice of all documents and other pleadings filed in this adversary proceeding, the underlying bankruptcy case, other court proceedings, and public records. Fed. R. Evid. 201; *Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the

requested documents, but not the truth or falsity of such documents as related to findings of fact or conclusions of law. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

JURISDICTION

The United States District Court for the Eastern District of California has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) because this is a case arising under title 11. This court has jurisdiction to hear and determine this matter by reference from the District Court under 28 U.S.C. § 157(a). This is a "core" proceeding under 28 U.S.C. § 157(b)(2)(A) (matter concerning administration of the bankruptcy estate), (b)(2)(K) (determination of the validity, extent, or priority of liens), and (b)(2)(O), (proceeding affecting the liquidation of assets of the estate). Venue is proper pursuant to 28 U.S.C. § 1409(a) because this adversary proceeding arises in a bankruptcy case pending in this judicial district.

BACKGROUND

Francisco Samaniego ("Debtor") filed chapter 13 bankruptcy on June 10, 2022. *Ex. B*, Doc. #18. The Bankruptcy Case was converted to chapter 7 on or about August 31, 2022. *Ex. D, id.* Plaintiff was appointed as the chapter 7 trustee.

At the time of filing the Bankruptcy Case, Debtor owned Property, which was disclosed on *Schedules A/B* filed June 23, 2022. *Ex. C* at 41, *id.* Debtor did not claim any exemption in Property. *Id.*

In seeking to sell Property, Plaintiff obtained a Preliminary Title Report, which should a transfer from Debtor to Defendant on or about October 13, 2021 with a deed recorded on or about November 16, 2021. *Ex. A, id.* Defendant subsequently transferred the Property back to Debtor on or about May 16, 2022 with a deed recorded on or about May 17, 2022. *Id.*

Plaintiff sought and obtained authorization to sell Property free and clear of Defendant's interest under 11 U.S.C. § 363(f)(4) because Defendant's interest was in bona fide dispute. *Exs. E-F, id.* Defendant's interest in Property, if any, transferred to the proceeds of the sale of Property. Thereafter, Plaintiff filed this adversary proceeding seeking a determination that Defendant has no interest in Property. Doc. #1.

DISCUSSION

I.

Civ. Rule 55, as incorporated by Rule 7055, governs default judgments. "To obtain a default judgment of nondischargeability of a loan debt, a two-step process is required: (1) entry of the party's default

(normally by the clerk), and (2) entry of default judgment." *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006), citing *Brooks v. United States*, 29 F.Supp 2d 613, 618 (N.D. Cal. 1998), *aff'd mem.*, 162 F.3d 1167 (9th Cir. 1998). "[A] default establishes the well-pleaded allegations of a complaint unless they are . . . contrary to facts judicially noticed or to uncontroverted material in the file." *Anderson v. Air West Inc. (In re Consol. Pretrial Proceedings in Air West Secs. Litig.)*, 436 F.Supp 1281, 1285-86 (N.D. Cal. 1977), citing *Thomson v. Wooster*, 114 U.S. 104, 114 (1885). Thus, a default judgment based solely on the pleadings may only be granted if the factual allegations are well-pled and only for relief sufficiently asserted in the complaint. *Benny v. Pipes*, 799 F.2d 487, 495 (9th Cir. 1986), *amended on other grounds*, 807 F.2d 1514 (9th Cir. 1987).

The court has broad discretion to require that a plaintiff prove up a case and require the plaintiff to establish the necessary facts to determine whether a valid claim exists supporting relief against the defaulting party. Entry of default does not automatically entitle a plaintiff to a default judgment. *Beltran*, 182 B.R. at 823; *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) ("Rule 55 gives the court considerable leeway as to what it may require as a prerequisite to entry of a default judgment.").

II.

Under 11 U.S.C. § 541(a), Debtor filing the Bankruptcy Case created a bankruptcy estate. The estate "is comprised of all of the following property, wherever located and by whomever held: . . . all legal or equitable interests of the debtor in property as of the commencement of the case." § 541(a)(1).

Plaintiff, as trustee of the Bankruptcy Case, has a duty to "collect and reduce to money the property of the estate . . . and close such estate as expeditiously as is compatible with the best interests of parties in interests." § 704. In furtherance of those duties, a bankruptcy trustee has the power to use, sell, or lease property of the estate under § 363.

Here, Debtor transferred Property to Defendant in November 2021 and Defendant transferred Property back to Debtor in May 2022. As a result of these transfers, Plaintiff contends that Property is property of the bankruptcy estate. Doc. #1.

CONCLUSION

Defendant failed to respond to the complaint asserting that Defendant has no interest in Property. Under Civ. Rule 8(d), failure to respond to Plaintiff's allegations in the complaint are deemed admitted. *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977). Therefore, Defendant has no interest in Property.

This motion will be GRANTED.