

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, August 11, 2021
Place: Department B – Courtroom #13
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [21-10300](#)-B-13 **IN RE: DONALD/STEPHANIE SALKIN**
[MHM-3](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
6-2-2021 [\[24\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this objection on July 23, 2021. Doc. #50. Accordingly, the objection will be dropped from calendar.

2. [17-10318](#)-B-13 **IN RE: ALBERT/DEE ANNA KNAUER**
[TCS-3](#)

MOTION TO SELL
7-20-2021 [\[62\]](#)

DEE ANNA KNAUER/MV
NANCY KLEPAC/ATTY. FOR DBT.
TIMOTHY SPRINGER/ATTY. FOR MV.

NO RULING.

Albert Lee Knauer and Dee Anna Lynn Knauer ("Debtors") seek authorization to sell all of the business assets and personal property located at their restaurant, "Good Times Café," in Paso Robles, California to Jack Alger ("Proposed Buyer") of Mutiny, LLC for \$62,000.00, subject to higher and better bids. Doc. #62.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court may GRANT this motion.

This motion concerns a proposed sale of property of the estate other than in the ordinary course of business, and therefore was properly

set for hearing on at least 21 days' notice as required by Fed. R. Bankr. P. 2002(a)(2) and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

11 U.S.C. § 363(b)(1) allows the chapter 13 trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

11 U.S.C. § 1303 states that the "debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections . . . 363(b) . . . of this title." 11 U.S.C. § 1302(b)(1) excludes from a chapter 13 trustee's duties the collection of estate property and reduction of estate assets to money. Therefore, a debtor has the authority to sell property of the estate under § 363(b).

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991)). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the [debtor]'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 [debtor]'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 Prod. 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 Proposed Buyer. Doc. #64. There is no indication that Proposed Buyer is an insider with respect to Debtors. Proposed Buyer and Mutiny, LLC are not listed in Schedules D, E/F, H, or the master address list. Docs. #1; #3. Debtors say that Proposed Buyer will make the purchase with outside financing. The court will verify at the hearing that Proposed Buyer and Mutiny, LLC are not insiders.

Good Times Café has locations in Visalia and Paso Robles, California. Doc. #62. Debtors valued their entire Good Times Café ownership interest and property at \$300,000 on the petition date. Doc. #1, *Schedule A/B*, ¶ 19. The business-related property owned by Debtors consists of fixtures and equipment valued at \$16,345 and

inventory worth \$12,000. *Id.*, ¶¶ 40-41, 45. Debtors also own two beer and wine licenses they value at \$600 total. *Id.*, ¶ 27.

It is unclear from the moving papers exactly what property Debtors wish to sell. There is no description of the assets in the motion or declaration. The schedules are vague. Debtors simply wish to sell "all business assets located in their Good Times Café location in Paso Robles." Doc. #62. Presumably, this includes some fixtures, equipment, and inventory. Is a beer and wine license included in the sale? What specifically is being sold and for what amount? How was the price determined or negotiated? The court is unable to determine whether the sale is in the best interests of the estate, for a fair and reasonable price, supported by valid business judgment, or proposed in good faith in the absence of any details about the sale.

Debtors believe that the remaining Good Times Café business assets will be worth approximately \$180,000, which implies that \$120,000 in property is being sold for \$62,000.

Nevertheless, Albert Knauer declares his belief that \$62,000 is the fair market value of the assets at this time. Doc. #64. He states that Debtors believe the sale is in the best interests of themselves, the business, and all creditors. Knauer offers to provide any sale documents to the chapter 13 trustee and states that there are no encumbrances associated with the assets to be sold. Debtors are paying a 100% dividend to unsecured creditors and insist that the sale does not affect the chapter 13 plan, so no trustee demand or payment to the estate is required. Debtors intend to use the funds to finish paying their chapter 13 plan and use the remainder for living expenses. All costs of sale will be paid from the sale proceeds.

Additionally, Debtors claim that Proposed Buyer will lease the premises, which would allow Debtors to break their current lease without penalty. Doc. #62. But is Proposed Buyer's assumption of the lease an express term of this sale? What if there is an overbidder? Debtors state that the sale is subject to higher and better bids at the hearing, "but would require obtaining a lease for the premises." This seems to imply that the lease is a term and condition of the sale. So, what are the terms of the lease?

This is also problematic because section 3.02 of the confirmed Plan specifically rejected unlisted leases. This lease was not listed. So, the lease was not assumed, and the status of the lease is not set forth in the motion.

This matter will be called as scheduled. The court will inquire about the chapter 13 trustee's position and whether any other parties in interest oppose. The Debtors shall be prepared to specifically identify the property to be sold and the method by which the fair market value was determined.

The court will ask if there are higher and better bids. The court may continue the matter so the record can be augmented.

No warranties are included with this sale. The business assets will be sold "as is." However, it appears that any sale also may include a lease assignment which is problematic as discussed above.

3. [21-11221](#)-B-13 **IN RE: WILLIAM SIFUENTES**
[MHM-1](#)

MOTION TO DISMISS CASE
7-9-2021 [\[18\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will be called as scheduled.

DISPOSITION: Granted.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case under 11 U.S.C. § 1307(c)(1) and (4) for unreasonable delay by the debtor that is prejudicial to creditors and failure to make all payments due under the plan. Doc. #18. Trustee declares that plan payments are delinquent \$2,010.00 as of July 9, 2021. Doc. #20.

William Contreras Sifuentes ("Debtor") timely responded. Doc. #26. Debtor states that he fell behind on plan payments because he thought payments were due after the plan was confirmed. *Id.* Debtor is sending in payments for June and July with the filing of the motion (on July 27, 2021) and will continue to timely make payments thereafter. *Id.* This response did not include corresponding proof of service and therefore does not comply with LBR 9014-1(e)(1-3). Debtor also filed a motion to confirm the First Modified Chapter 13 Plan (Doc. #32), which is set for hearing on September 22, 2021. TCS-1.

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

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) for being delinquent in making plan payments.

Trustee requests that this chapter 13 be dismissed. Neither any creditors nor the U.S. trustee have expressed a contrary position.

This court's review of the record indicates that there are not assets to liquidate or avoiding actions to pursue that likely would result in a material distribution to creditors and that there is no other reason to favor conversion. Doc. #11. Accordingly, the best interests of creditors and the estate are served by dismissal, rather than conversion.

This matter will be called to confirm whether Debtor is current. If Debtor is current on plan payments, the court may continue this motion to September 22, 2021 at 9:30 a.m. to be heard in connection with Debtor's motion to confirm the First Modified Chapter 13 Plan. If Debtor is not current, the motion will be GRANTED.

If the matter is continued, Debtor shall file a certificate of service to prove that the responsive declaration was served on Trustee and the U.S. trustee not later than August 18, 2021.

4. [21-11223](#)-B-13 **IN RE: CHRISTOPHER/TRACEY PRESS**
[TCS-2](#)

MOTION TO CONFIRM PLAN
7-7-2021 [\[34\]](#)

TRACEY PRESS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

Christopher David Press and Tracey Lee Press ("Debtors") seek confirmation of their First Modified Chapter 13 Plan. Doc. #34.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected for the following reasons under 11 U.S.C. §§ 1325(a)(6) and 1322(a):

1. Debtors will not be able to make all payments under the plan and comply with the plan as required (§ 1325(a)(6)) because Debtors are delinquent on their initial plan payment of \$676.74 due June 25, 2021.
2. The plan fails to provide for the full payment, in deferred cash payments, of all claims entitled to priority under § 507 (§ 1322(a)) because the Internal Revenue Service ("IRS") filed Proof of Claim No. 7 on July 7, 2021 for a priority claim of \$1,496.00 for 2020 taxes.
3. The plan fails to provide for submission of all or such portion of future earnings or other future income to the supervision and control of the trustee as is necessary to execute the plan (§ 1322(a)). Trustee states that this issue

can be resolved in the order confirming plan by increasing the plan payment to \$687.20 to account for the IRS priority claim.

Doc. #44. However, Debtors filed their Second Modified Chapter 13 Plan on July 30, 2021 (Doc. #48), which is set for hearing on September 22, 2021. TCS-3.

Accordingly, this motion will be DENIED AS MOOT because Debtors filed a modified plan.

5. [20-13727](#)-B-13 **IN RE: ADOLFO/AURELIA HERNANDEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
7-7-2021 [\[67\]](#)

MICHAEL MEYER/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 1, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors and failure to confirm a chapter 13 plan Doc. #67. Trustee declares that the debtors' motion to confirm their First Modified Chapter 13 Plan was denied on May 26, 2021 and now it has been six months since the case was filed without confirming a plan. Doc. #69; *see also* SL-2.

The court notes Trustee's second motion to dismiss (Doc. #22.) that is set for hearing on August 18, 2021. MHM-2.

Adolfo Hernandez and Aurelia Hernandez ("Debtors") timely responded. Doc. #86. Debtors state that an updated motion to confirm the First Modified Chapter 13 Plan was filed and set for hearing on September 1, 2021. Doc. #73; SL-3. Scott Lyons, Debtors' attorney, declares that the original plan was denied for procedural reasons. Doc. #87. He did not immediately file a new motion "due to solely a calendaring error" on his part and he accepts full responsibility. *Id.*

This motion/objection was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtors 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 except Debtors are entered.

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) for being delinquent in making plan payments.

This motion will be CONTINUED to September 1, 2021 at 9:30 a.m. to be heard in connection with Debtors' motion to confirm their First Modified Chapter 13 Plan.

6. [20-10859](#)-B-13 **IN RE: KEITH/GERALDINE CASH**
[TCS-3](#)

MOTION TO MODIFY PLAN
6-30-2021 [\[40\]](#)

GERALDINE CASH/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 22, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

Keith Raymond Cash and Geraldine Lee Cash ("Debtors") seek confirmation of their First Modified Chapter 13 Plan. Doc. #40.

Chapter 13 trustee Michael H. Meyer timely objected under 11 U.S.C. § 1325(b)(4) because the plan provides for payments to creditors for a period shorter than three years. Doc. #48. Trustee contends that the plan can only be less than three years if the plan provides for payment in full of all unsecured claims under § 1325(b)(4)(B).

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2) and will proceed as scheduled. The failure of the creditors, the U.S. Trustee, or any other party in interest except Trustee 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 except Trustee are entered.

Debtors' current plan was confirmed August 10, 2020 and provides for 36 monthly payments of \$1,018.00 per month. Doc. #2, §§ 2.01, 2.03. The proposed First Modified Chapter 13 Plan, meanwhile, reduces the duration of the plan to 33 months while decreasing the monthly payment to \$397.00 for the remainder of plan payments. Doc. #44, §§ 2.01, 2.03, 7.

Joint Debtor Keith Cash declares that they fell behind on plan payments because he is on disability and were only able to "get as far as [they] did" because of COVID-19 stimulus payments. Doc. #43.

Nancy D. Klepac, Debtors' attorney, declares that the plan satisfies the liquidation of analysis under 11 U.S.C. § 1325(a)(4). Doc. #42. Based on Debtors' assets and debts, she calculated that there would be \$8,293.90 available for disbursement to unsecured creditors if the case were converted to chapter 7. She states that the 20% distribution to unsecured creditors exceeds this amount and therefore satisfies the liquidation requirement. *Id.* Additionally, Debtors have \$396.99 in monthly disposable income available to make payments, so the \$397.00 monthly payment proposed in the plan is the most that Debtors have available to pay.

While the reduction in monthly payment and percentage of distribution to unsecured creditors may be permissible in these circumstances, § 1325(b)(4)(B) is clear: the applicable commitment period may only be less than three years if the plan provides for payment in full of all allowed unsecured claims over a shorter period.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtors shall file and serve a written response not later than September 8, 2021. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by September 15, 2021.

If Debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than September 15, 2021. If Debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

7. [16-11461](#)-B-13 **IN RE: TABITHA LOPEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
7-13-2021 [\[19\]](#)

MICHAEL MEYER/MV
JAMES MILLER/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on July 30, 2021. Doc. #25. Accordingly, the motion will be DROPPED from calendar.

8. [20-13261](#)-B-13 **IN RE: HUMBERTO COVIAN**
[SLL-3](#)

OBJECTION TO CLAIM OF RUBEN PERRY & MELISSA GARZA-PERRY,
CLAIM NUMBER 9
6-14-2021 [\[38\]](#)

HUMBERTO COVIAN/MV
STEPHEN LABIAK/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.

Humberto Macias Covian ("Debtor") objects to Claim No. 9-1 filed by Rubin Perry and Melissa Garza Perry ("Claimants") on December 16, 2020 in the sum of \$26,600.00 and a priority amount of \$3,025.00. Doc. #40.

Claimants timely opposed contending that they are entitled to \$26,600, which is the amount they are seeking in their ongoing state court litigation. Doc. #46.

This matter will be called as scheduled. The court is inclined to OVERRULE the objection.

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest except Claimants 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 this objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Claimants are entered.

First, the court notes procedural defects Claimants' opposition. Claimants' declarations include attached certificates of service and exhibits. Docs. ##47-48. These exhibits are attached to declarations, are not consecutively numbered, and do not have an index identifying each exhibit by its exhibit number or letter and the page on which each exhibit can be located.

LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages,

including any separator, cover, or divider sheets. LBR 9004-2(e) (1) and (2) provide that proofs of service shall be filed as separate documents and shall not be attached to copies of the pleadings. Claimants are advised to review the local rules and ensure procedural compliance in future filings.

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

Federal Rule of Bankruptcy Procedure ("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, Debtor claims that the Claimants filed documents in their Madera state court lawsuit stating that the amount of money needed to complete the "job" in which the claim arose was \$8,000.00, so Debtor thinks the claim should be reduced to that amount. Doc. #38. However, this is hearsay because Claimants purportedly made these statements in court filings that are not before this court used to prove the truth of the matter asserted. Fed. R. Evid. 801(c), 802. Although it is the statement of an opposing party, Debtor has offered no other evidence in support of the objection.

Claimants' proof of claim is *prima facie* evidence of the validity and amount of the claim. Debtor has the burden of proof as the objecting party and has failed to offer any evidence besides a copy of the proof of claim, which omits Attachment #1 to the claim. See Claim #9-1, Attach. #1. Attachment #1 includes an invoice for landscaping services dated September 13, 2019 and totaling \$23,920.00. Additional figures are added in handwritten text indicating a new total of \$26,600. *Id.*

Also included in Attachment #1 is the complaint filed in Madera County Superior Court entitled *Ruben Perry and Melissa Garza-Perry v. Humberto Covian, et al.*, Case No. MCV083992. This case was filed on August 14, 2020 and alleges violation of contractor license law, breach of contract, professional negligence, and fraud. *Id.*, Complaint, 1. Claimants allege that they paid Debtor \$26,600 from September 20, 2019 through December 27, 2019. They seek the full return and disgorgement of that amount plus compensatory damages to be determined at trial, treble damages of up to \$10,000 under Cal. Civ. Proc. ("C.C.P.") Code § 1029.8, pre-judgment interest of 10% per annum on the amounts of damages, exemplary and punitive damages according to proof, reasonable attorney's fees, and costs of suit. *Id.*, at 19.

Claimants' opposition includes a brief history of their relationship with Debtor and outlines the reasons they believe they are entitled to the full claim amount, plus additional fees and penalties. Doc. #46. Claimants also contend that Debtor's objection fails to comply with LBR 3007-1 because it was not accompanied by evidence

establishing its factual allegations and proof that the claim should be disallowed. The court agrees.

Neither Claimants nor Debtor reserved the right to schedule an evidentiary hearing by identifying material factual issues under LBR 9014-1(f)(1)(B), (C). In fact, Claimants specifically consented to the court's resolution without live testimony. Doc. #47.

This matter will proceed as scheduled. The court is inclined to **OVERRULE** the objection because Debtor provided no evidence that the claim should be disallowed and has failed to make a *prima facie* showing that he is entitled to the relief sought.

9. [21-10061](#)-B-13 **IN RE: JACINTO/KAREN FRONTERAS**
[GEG-2](#)

MOTION TO VALUE COLLATERAL OF FEDERAL SAVINGS BANK
7-8-2021 [\[70\]](#)

KAREN FRONTERAS/MV
GLEN GATES/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued; date determined at the hearing.

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

Jacinto Fronteras and Karen Jo Fronteras ("Debtors") move for an order valuing a 2016 Forest River Salem Cruise Lite 211SSXL 2 ("Trailer") at \$10,000.00 under 11 U.S.C. § 506(a)(2). Doc. #70.

USAA Federal Savings Bank ("Creditor") owns the claim secured by Vehicle and timely opposed. Claim No. 1-1 (valuing Trailer at \$13,650.00); Doc. #92. Creditor believes Trailer's value may exceed \$13,000.00. *Id.* Creditor requests a 60-day continuance to further investigate the value of Trailer and, if necessary, obtain a verified, full interior appraisal. *Id.*

No other parties in interest timely filed opposition. The court is inclined to CONTINUE this matter.

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 13 trustee, the U.S. Trustee, or any other party in interest except USAA Federal Savings Bank 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 except USAA Federal Savings Bank are entered.

First, the court notes procedural defects in both parties' moving papers. Debtors' exhibit document is not consecutively numbered and does not contain an index identifying the exhibit by its exhibit number or letter and the page on which it can be located. Doc. #68. Moreover, Creditor's opposition includes an attached certificate of service and exhibits. Doc. #92. Those exhibits also are not consecutively numbered and do not have an index identifying each exhibit by its exhibit number or letter and the page on which each exhibit can be located.

LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. LBR 9004-2(e) (1) and (2) provide that proofs of service shall be filed as separate documents and shall not be attached to copies of the pleadings. The parties are advised to review the local rules and ensure procedural compliance in future filings.

11 U.S.C. § 1325(a) (*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) that collateral is personal property other than a motor vehicle acquired for the personal use of the debtor, and (3) the debt was incurred within one year preceding the filing of the petition.

Here, Trailer is encumbered by a purchase-money security interest in favor of Creditor, and it is a trailer, which is not a motor vehicle acquired for personal use of the debtor. Doc. #67. The debt was incurred on or about July 5, 2017, which is 1,286 days – more than one year – preceding the petition date. Doc. #73. The elements of § 1325(a) (*) are not met and § 506 is applicable.

11 U.S.C. § 506(a) (1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

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

Debtors are competent to testify as to the value of the Trailer as its owner and in the absence of contrary evidence, that opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtors opine that Trailer has a replacement value of \$10,000 based on personal knowledge of the Trailer as its owner and familiarity with trailers of the same make, model, age, and condition. Doc. #67. This opinion is admissible but not conclusive due to Creditor's opposition.

Creditor, meanwhile, relies on National Automobile Dealer Association ("NADA") guides. Doc. #92. But Creditor has not established itself as an expert and cannot rely on NADA guides as a reliable method of discerning Property's replacement value. See Fed. R. Evid. 702; see also *In re DaRosa*, 442 B.R. 173, 175 (Bankr. D. Mass. 2010); *Young v. Camelot Homes, Inc. (In re Young)*, 390 B.R. 480, 493 (Bankr. D. Me. 2008) ("[B]ecause [Debtor] used Kelley trade-in listings as the starting point of his analysis, his opinions will not be taken as convincing evidence of replacement value.").

This matter will proceed as scheduled and will proceed as a scheduling conference. This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

Based on the record, the sole factual issue is a determination of Trailer's replacement value.

The court is inclined to CONTINUE this motion so Creditor may conduct its investigation and file further opposition. The continued hearing date and the parties' filing deadlines will be determined at the hearing.

10. [21-10061](#)-B-13 **IN RE: JACINTO/KAREN FRONTERAS**
[GEG-3](#)

MOTION TO VALUE COLLATERAL OF USAA FEDERAL SAVINGS BANK
7-8-2021 [\[71\]](#)

KAREN FRONTERAS/MV
GLEN GATES/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued; date determined at the hearing.

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

Jacinto Fronteras and Karen Jo Fronteras ("Debtors") move for an order valuing a 2018 Avalon Catalina CR Funship 25 ("Boat") equipped with a 2018 Mercury 150XL ("Engine") and a VM Trailer ("Trailer"; collectively "Property") at \$24,000.00 under 11 U.S.C. § 506(a)(2). Doc. #71. Debtors obtained an appraisal on April 27, 2021, which estimated the Boat's market value to be \$21,050 due to a necessary \$1,550 repair. Doc. #74. The Trailer's market value was determined to be \$2,325.00. *Id.* The appraisal report specifically did not include an engine or machinery survey to estimate the value of the

Engine, and the replacement values of the Boat and Trailer were not estimated. *Id.*

USAA Federal Savings Bank ("Creditor") owns the claim secured by Property and timely opposed. Claim No. 22-1 (valuing Property at \$45,970.00); Doc. #91. Creditor believes Property's value may exceed \$40,000.00. *Id.* Creditor requests a 60-day continuance to further investigate the value of Property and, if necessary, obtain a verified, full interior appraisal. *Id.*

No other parties in interest timely filed opposition. The court is inclined to CONTINUE this matter.

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 13 trustee, the U.S. Trustee, or any other party in interest except USAA Federal Savings Bank 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 except USAA Federal Savings Bank are entered.

First, the court notes procedural defects in both parties' moving papers. Debtors' exhibit document is not consecutively numbered and does not contain an index identifying each exhibit by its exhibit number or letter and the page on which it can be located. Doc. #74. Moreover, Creditor's opposition includes an attached certificate of service and exhibits. Doc. #91. Those exhibits also are not consecutively numbered and do not have an index identifying each exhibit by its exhibit number or letter and the page on which each exhibit can be located.

LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. LBR 9004-2(e)(1) and (2) provide that proofs of service shall be filed as separate documents and shall not be attached to copies of the pleadings. The parties are advised to review the local rules and ensure procedural compliance in future filings.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) that collateral is personal property other than a motor vehicle acquired for the personal use of the debtor, and (3) the debt was incurred within one year preceding the filing of the petition.

Here, Property is encumbered by a purchase-money security interest in favor of Creditor and consists of the Boat, Engine, and Trailer, so it is personal property other than a motor vehicle acquired for personal use of the debtor. The debt was incurred on or about July 2018, which is more than one year preceding the petition date.

Doc. #73. The elements of § 1325(a) (*) are not met and § 506 is applicable.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

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

Debtors are competent to testify as to the value of the Property as its owner and in the absence of contrary evidence, that opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtors rely on an appraisal report that determined the market value of the Boat and Trailer, but the Engine was excluded from its analysis and replacement value is the relevant valuation standard. Doc. #74. Debtors' declaration contains their opinion of Property's replacement value, which is admissible but not conclusive due to Creditor's opposition.

Creditor, meanwhile, relies on National Automobile Dealer Association ("NADA") guides. Doc. #91. But Creditor has not established itself as an expert and cannot rely on NADA guides as a reliable method of discerning Property's replacement value. See Fed. R. Evid. 702; see also *In re DaRosa*, 442 B.R. 173, 175 (Bankr. D. Mass. 2010); *Young v. Camelot Homes, Inc. (In re Young)*, 390 B.R. 480, 493 (Bankr. D. Me. 2008) ("[B]ecause [Debtor] used Kelley trade-in listings as the starting point of his analysis, his opinions will not be taken as convincing evidence of replacement value.").

This matter will proceed as scheduled and will proceed as a scheduling conference. This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

Based on the record, the sole factual issue is a determination of Property's replacement value.

The court is inclined to CONTINUE this motion so Creditor may conduct its investigation and file further opposition. The continued hearing date and the parties' filing deadlines will be determined at the hearing.

11. [21-10061](#)-B-13 **IN RE: JACINTO/KAREN FRONTERAS**
[JES-3](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, CHAPTER 7
TRUSTEE(S)
7-9-2021 [\[78\]](#)

JAMES SALVEN/MV
GLEN GATES/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.

Former chapter 7 trustee James E. Salven ("Applicant") requests statutory compensation of \$4,836.14 under 11 U.S.C. §§ 326, 330 for services rendered to the estate prior to conversion to chapter 13. Doc. #78. Applicant seeks fees of \$4,525.00 and costs of \$311.14 for reasonable compensation and actual, necessary expenses for services rendered from January 11, 2021 through July 12, 2021.

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 debtors, the chapter 13, trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

First, the motion does not procedurally comply with the local rules because the motion and exhibits are combined into one document and not filed separately. LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, the motion is attached to the exhibits, which are also not consecutively numbered throughout the entire document with an index identifying each exhibit by its exhibit number or letter and the page on which each exhibit can be located. Doc. #78. Applicant

is advised to review the local rules and ensure procedural compliance in future filings.

Jacinto Fronteras and Karen Jo Fronteras ("Debtors") filed chapter 7 bankruptcy on January 11, 2021. Doc. #1. Applicant was appointed as interim trustee on that same date and became permanent chapter 7 trustee at the first § 341 meeting of creditors on February 11, 2021. Doc. #3. This case was voluntarily converted to chapter 13 on June 17, 2021. Doc. #45. That same day, Applicant was removed from the case and Michael H. Meyer was appointed as the chapter 13 trustee ("Trustee"). See Doc. #47. Applicant requests approval of his fees to be paid as an administrative expense under Debtors' chapter 13 plan. Doc. #78.

Applicant states that his services resulted in disclosure of undervalued assets and the conversion to chapter 13. Doc. #78, ¶ 16. Those assets include:

Motorcycles ¹		\$7,156.53
Undisclosed cash	+	\$4,805.00
Non-exempt tax refunds	+	\$4,300.00
Firearms ²	+	\$2,000.00
Toyota Tundra ³	+	\$4,300.00
Real Property ⁴	+	\$25,000.00
Cash withdrawals ⁵	+	\$3,800.00
Two vehicles ⁶	+	Unknown
Total:	≥	\$51,361.53

Ibid. Reducing the proceeds of the sale of the motorcycles to the \$7,156.53 net to the estate still results in over \$50,000.00 in net proceeds to the estate that will be paid out to creditors.

Applicant states that the debtor's Schedule E/F indicated approximately \$145,611.00 in unsecured claims will benefit from payment. *Id.* However, Debtors' chapter 13 plan proposes to pay 7.9% to unsecured claims totaling \$161,465.53, which is \$12,755.78. Doc. #50. The class 1 creditor will be paid \$2,428.83 for 60 months,

¹ Applicant states that two motorcycles sold for \$9,800, but the Return of Sale filed on June 28, 2021 says that the two motorcycles sold for \$8,800, with \$7,156.53 net to the estate. Doc. #54. Applicant initially estimated that they would sell for \$5,550, with \$5,000 net to the estate. JES-2.

² See JES-1. Applicant's objection to a claim of exemptions for firearms was sustained on April 21, 2021. Doc. #28. Applicant estimates that these firearms should sell for at least \$2,000. Doc. #78.

³ Applicant refers to a 2016 Toyota Tundra valued at \$34,000 and encumbered by a \$29,610 loan. Doc. #63, *Am. Schedule A/B, D*.

⁴ Debtors own land referred to as "North Fork" valued at \$25,000 and encumbered by an \$18,000 lien in favor of Patrick Kennedy. *Id.* Applicant claims this land is currently in escrow and will net approximately \$7,000 to the estate. Doc. #78, ¶ 16.

⁵ Applicant discovered unexplained cash withdrawals of over \$3,800.00. *Id.*

⁶ Applicant discovered the transfer of two vehicles during the avoidance period. *Id.* These have not been investigated further but may provide additional liquidity to the estate.

plus \$8,450 in arrears, totaling approximately \$154,180. Class 2 (A) and 2 (B) creditors will be paid \$680.55 and \$604.00 during months 17-60, resulting in an additional \$56,520.20 in disbursements to secured creditors.

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims.

11 U.S.C. § 326(a).

Applicant requests compensation totaling \$4,525.00. Doc. #78. He states his office performed 18.1 billable hours of services at a rate of \$250 dollars per hour totaling \$4,525.00. Applicant's fees under the lens of § 326(a) are as follows:

1. \$1,250.00 (25%) of the first \$5,000.00;
2. \$3,275.00 (7.278%) of the next \$45,000.00.

These percentages comply with the percentage restrictions imposed by § 326(a). The estimated increase in disbursement from Applicant's services exceeds \$51,361.53 and the Debtors' proposed distributions in their chapter 13 plan appear to exceed \$200,000. Applicant's requested compensation is still below the \$50,000 disbursement fee threshold.

Applicant also requests reimbursement for actual, necessary expenses:

Copies (230 @ \$0.20)	\$46.00
Envelopes (4 @ \$0.20)	+ \$0.80
CourtCall fees	+ \$22.50
Filing and service fees	+ \$241.84
Total Costs	= \$311.14

These combined fees and expenses total **\$4,836.14**.

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual, necessary services to the estate, as

well as reimbursement for actual, necessary expenses. 11 U.S.C. § 330(a)(1)(A) and (B).

Applicant's services included, but were not limited to:

(1) preparing for and appearing at the meeting of creditors;
(2) reviewing and reconciling the petition with financial records;
(3) discovering undisclosed cash totaling \$5,000; (4) preparing objection to claim of exemptions for firearms (JES-1); (5) preparing and filing motion to employ auctioneer and sell personal property (JES-2); (6) preparing sell of vacant land to third party for \$25,000; (7) writing conversion letter to U.S. trustee and chapter 13 trustee and transferring funds and documentation to chapter 13 trustee; and (8) preparing and filing this fee application.

Doc. #78, Ex. A. The court finds Applicant's services were actual and necessary to the estate, and the fees are reasonable and consistent with § 326(a).

No party in interest timely filed written opposition. The motion will be GRANTED. Applicant will be awarded \$4,836.14 as final compensation pursuant to §§ 326, 330. Trustee will be authorized to pay Applicant fees of \$4,525.00 and costs of \$311.14 for services rendered to the estate as chapter 7 trustee from January 11, 2021 through July 12, 2021.

11:00 AM

1. [20-11296](#)-B-7 **IN RE: KYLE/DEANNA MAURIN**
[20-1044](#) [BN-1](#)

MOTION TO AMEND PRETRIAL SCHEDULING ORDER
7-2-2021 [\[22\]](#)

KAPITUS SERVICING, INC. V.
MAURIN
MICHAEL MYERS/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

Kapitus Servicing, Inc. ("Plaintiff") moves for an order modifying the court's pretrial scheduling order under Federal Rule of Civil Procedure 16 (as incorporated by Federal Rule of Bankruptcy Procedure 7016).⁷ Doc. #22. Despite diligently preparing for this case since its inception, Plaintiff states that its lead counsel, Michael S. Myers, welcomed his second child and will be out on paternity leave until early August 2021. Doc. #25. Plaintiff further claims that defendant Kyle Maurin will not suffer any prejudice if the court modified the scheduling order because he will have more time to finish trial preparation.

Plaintiff seeks to increase the deadlines as follows:

Event	Current Deadline	Proposed Extension
Close of Expert Discovery	July 2, 2021	September 27, 2021
Deadline for Hearing Dispositive Motions	August 11, 2021	November 10, 2021
Plaintiff's Pretrial Statement	September 15, 2021	December 8, 2021
Defendant's Pretrial Statement	September 22, 2021	December 15, 2021
Pretrial Conference	September 29, 2021	December 22, 2021

Debtor Kyle Maurin ("Defendant") timely opposed. Doc. #30. Defendant argues that Plaintiff made the business decision to assign only one attorney to this case and only after the deadline for filing dispositive motions was this extension of time sought. Defendant notes that he suggested a discovery period of six months, but Plaintiff said it required nine months. Defendant consented to the nine-month period.

⁷ Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rule" will be to the Federal Rules of Bankruptcy Procedure; "Civil Rule" will be to the Federal Rules of Civil Procedure; and all chapter and section references will be to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

Plaintiff replied contending that a brief extension is warranted under the circumstances. Doc. #37. Plaintiff insists that Defendant will suffer no harm as result of a brief time extension, but it will be greatly prejudiced without one. Plaintiff agrees to forgo extension of the close of expert discovery and hearing dispositive motions deadlines, but requests to extend the pretrial statement and conference dates as outlined above.

Civil Rule 16(b)(4) allows for modifications to a pretrial scheduling order "only for good cause and with the judge's consent." When considering requests to modify pretrial scheduling orders, courts focus on the diligence of the party seeking to modify the scheduling order. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992). "If the party was not diligent, the inquiry should end." *Id.*

This matter will be called as scheduled.

2. [20-11296](#)-B-7 **IN RE: KYLE/DEANNA MAURIN**
[20-1044](#) [BN-2](#)

MOTION FOR ORDER ASSIGNING THE ADVERSARY PROCEEDING TO THE
BANKRUPTCY DISPUTE RESOLUTION PROGRAM
7-2-2021 [\[27\]](#)

KAPITUS SERVICING, INC. V.
MAURIN
MICHAEL MYERS/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

Kapitus Servicing, Inc. ("Plaintiff") moves for an order assigning this adversary proceeding to the Bankruptcy Dispute Resolution Program ("BDRP") under General Order 95-1. Doc. #27.

Kyle Maurin ("Defendant") timely opposed. Doc. #34. Defendant does not believe referral to the BDRP will resolve the adversary proceeding and suggests that Plaintiff wants referral to the BDRP to defer prosecution of the adversary proceeding.

Plaintiff replied arguing that the parties would benefit from a neutral evaluation at the conclusion of discovery and asks the court to use its authority to refer the case to BDRP. Doc. #40.

General Order 95-1 § 2.1 provides that all controversies arising in an adversary proceeding is eligible for referral to the BDRP except employment and compensation of professionals, compensation of trustees and examiners, objections to discharge under § 727, and matters involving contempt or other sanctions. Gen. Order. 95-1, § 2.1 (March 1, 1995). Section 5.1 states, "[w]hile participation in the BDRP is intended to be voluntary, any judge, acting sua sponte or on the request of a party, may designate specific Matters for inclusion in the program." *Id.*, § 5.1 (emphasis in original).

This matter will proceed as scheduled.