UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, August 13, 2020
Place: Department A – 510 19th Street
Bakersfield, California

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. 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.

1. 19-14515-A-13 **IN RE: SANOVIO GARCIA**
RSW-3

AMENDED MOTION TO MODIFY PLAN
6-26-2020 [56]

SANOVIO GARCIA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
OPPOSITION WITHDRAWN

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). LBR 9014-1(f)(1) requires 28 days' notice of the hearing and notice that responding parties must file opposition at least fourteen 14 days prior to the hearing. At least 7 days prior to the date of the hearing, the moving party may file a reply to any opposition filed by a responding party.

The Chapter 13 trustee filed a timely objection to the Debtor's motion to confirm the Chapter 13 plan filed on June 19, 2020 on the basis that the plan at Section 3.06 fails to state a monthly payment amount to be paid for attorney's fees. Doc. #62. The Chapter 13 trustee, the Debtor and the Debtor's counsel agree that the Chapter 13 plan can be confirmed with the following change to be reflected in the order confirming the plan:

> **Section 3.06 fails to provide a monthly dividend; therefore, the attorney of record has agreed to be paid pro-rata with all unsecured creditors.**

Doc. ##64. With this clarification, the Chapter 13 trustee has withdrawn his objection. No other responding party filed written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B), which 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 other responding parties 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).

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. The order confirming the plan shall also state: "Section 3.06 fails to provide a monthly dividend; therefore, the attorney of record has agreed to be paid pro-rata with all unsecured creditors."

2. 19-13020-A-13 **IN RE: MOISES/LUCINA OCAMPO**
LKW-4

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
7-8-2020 [66]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

In this Chapter 13 case, Leonard Welsh, attorney for debtors Moises Moreno Ocampo and Lucina Zepeda Ocampo, has applied for an allowance of interim compensation and reimbursement of expenses. Doc. #66. The applicant requests that the court allow compensation in the amount of $2,030.00 and reimbursement of expenses in the amount of $158.20, totaling $2,188.20, for services rendered from November 1, 2019 through June 30, 2020. Id.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See id. § 330(a)(3). The services rendered for the relevant time period of this application reflect legal services and costs advanced by counsel that were necessary to the administration of the debtors' Chapter 13 case. Doc. ##69, 70. The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis.

This motion is GRANTED. The court allows interim compensation in the amount of $2,030.00 and reimbursement of expenses in the amount of $158.20 to be paid in a manner consistent with the terms of the confirmed plan.

3. 18-10929-A-13 **IN RE: LARRY/SILVIA HULSEY**
WDO-1

MOTION TO MODIFY PLAN
7-8-2020 [36]

LARRY HULSEY/MV
WILLIAM OLCOTT/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 8, 2020 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 trustee (the "Trustee") has filed an objection to the debtors' motion to confirm a Chapter 13 plan. Doc. #41. Unless this case is voluntarily converted to Chapter 7, dismissed, or the Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than September 17, 2020. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. The Trustee shall file and serve a reply, if any, by September 24, 2020.

If the 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 24, 2020. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the Trustee's opposition without a further hearing.

4. 18-13030-A-13 **IN RE: JESUS PORTILLO-VAQUERO AND ELSA GONZALEZ-PORTILLO**
PK-7

RESCHEDULED HEARING RE: MOTION TO MODIFY PLAN
6-10-2020 [127]

JESUS PORTILLO-VAQUERO/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). LBR 9014-1(f)(1) requires 28 days' notice of the hearing and notice that responding parties must file opposition at least fourteen 14 days prior to the hearing. At least 7 days prior to the date of the hearing, the moving party may file a reply to any opposition filed by a responding party. The Chapter 13 trustee (the "Trustee") has filed a timely objection to the Debtors' motion to confirm a modified plan. Doc. #148. The Debtors responded. Doc. #153. This matter will proceed as scheduled.

The Trustee objects to confirmation on the basis that the plan payment is short by $33.33 per month to pay the monthly dividends for months 24-30 and short $233.74 for month 31. Doc. #148. The Debtors respond that they have filed amended Schedules I and J, which reflect the Debtors' ability to make payments

that are $33.33 higher per month. Doc. #153. However, the Debtors' filing at Doc. #152 includes only an amended Schedule J; an amended Schedule I is absent. The Debtors' amended Schedule J filed on July 31, 2020 does reflect lower monthly expenses compared with the Schedule J filed in January 2020, however the Debtors' monthly income also appears to be significantly lower, resulting in lower monthly net income of $836.53. Compare Doc. #152 with Doc. #101. The modified plan proposes payments of $1,677.00 from July 2020 onward. Doc. #133, at § 7. The Debtors also do not account for the shortage of $233.74 for month 31.

The Trustee further objects that the additional provisions at Section 7 appear to state that plan payments to date are delinquent by $10,000.00. Doc. #148. The Debtors respond that the $10,000.00 difference is a typo, and that they are current through July 2020 and will make the August 2020 payment. Doc. #153.

At the hearing, the Debtors should be prepared to address the above concerns. The Debtors propose correcting the above discrepancies in the confirmation order.

5. 20-10931-A-13 **IN RE: EDWARD FELICIANO**
RSW-2

CONTINUED MOTION TO CONFIRM PLAN
6-3-2020 [36]

EDWARD FELICIANO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1), and the court continued the hearing on this matter from July 9, 2020 to allow the Debtor to respond. This matter will proceed as scheduled.

The Chapter 13 trustee (the "Trustee") filed a timely objection pursuant to 11 U.S.C. § 1325(a)(6) to the Debtor's motion to confirm a plan on the basis that the Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #47. The Trustee stated that the Debtor was delinquent in the amount of $3,071.24 and would owe another payment of $2,697.12 for June 2020. The Debtor filed a response on July 23, 2020, stating that he made a payment of $5,000.00 in July 2020. Doc. #52. That payment leaves $768.36 owing for June 2020. The Debtor expected to be able to make the June 2020 payment and make the $2,697.12 payment for July 2020 prior to the continued hearing. Doc. #52. According to the Trustee's reply filed on July 30, 2020, the Debtor remained delinquent on the $768.36 owing for June 2020 and had not made the $2,697.12 payment for July 2020. Doc. #54. The Debtor filed a response on August 11, 2020 stating that he delivered a cashier's check for $1,800.00 to Debtor's counsel, which will be forwarded to the Trustee. Doc. #56. The Debtor is still delinquent by $1,665.48 for July 2020.

If the Debtor is not current though July 2020 on the date of the hearing, the court is inclined to sustain the Trustee's objection. If the Debtor is current though July 2020, and can explain these irregular payments and what will be done to ensure regular payments through the life of the plan to the court's satisfaction, the court is inclined to grant the Debtor's motion to confirm the Chapter 13 plan.

6. 20-11149-A-13 **IN RE: RAYSHAWN LYONS**
MMJ-1

OBJECTION TO CONFIRMATION OF PLAN BY FREEDOM TRUCK FINANCE, LLC
6-24-2020 [34]

FREEDOM TRUCK FINANCE, LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

The objection of Freedom Truck Finance, LLC is DENIED AS MOOT. This objection relates to the Debtor's Chapter 13 plan filed on April 20, 2020. See Doc. #21. The Debtor has filed a modified Chapter 13 plan (RSW-3). Doc. #43.

7. 20-11149-A-13 **IN RE: RAYSHAWN LYONS**
RSW-2

AMENDED MOTION TO VALUE COLLATERAL OF FREEDOM TRUCK FINANCE
7-16-2020 [55]

RAYSHAWN LYONS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

This amended motion relates back to the Debtor's previously filed motion to value the collateral of Freedom Truck Finance (RSW-2), filed on June 6, 2020 at Doc. # 23. The court continued this matter from July 9, 2020 to allow the Debtor leave to correct a procedural deficiency by amending the motion to set forth the legal grounds for the relief sought as required by Local Rule of Practice ("LBR") 9014-1(d)(3)(A). The motion was originally set for hearing on 28 days' notice pursuant to LBR 9014-1(f)(1). Freedom Truck Finance timely opposed the Debtor's originally filed motion and has not withdrawn its opposition at Doc. #30. This matter will proceed as scheduled.

Rayshawn Deon Lyons (the "Debtor") moves the court pursuant to 11 U.S.C. § 506(a)(1) for an order valuing the Debtor's 2012 Freightliner Cascadia (the "Vehicle"), which is the collateral of Freedom Truck Finance (the "Creditor"), at $20,000.00, fixing the Creditor's secured claim at $20,000.00, with the remaining debt treated as an unsecured claim. Doc. ##23, 55. The Creditor opposes the motion. Doc. #30.

Bankruptcy Code section 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)(1). Section 506(a)(2) of the Bankruptcy Code states that

where the debtor is in Chapter 13, the value of the personal property securing an allowed claim "shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing."

The Debtor's motion states that "[t]he subject vehicle that is the subject of this motion was not acquired for personal, family, or household purposes, in that it is a large vehicle used in a trucking business." Doc. #55, Amended Motion. The purchase agreement submitted by Freedom Truck Finance supports the Debtor's assertion that the Vehicle was purchased for use in a business. Doc. #32, Ex. 1. Under the section entitled "Security," the terms state that "the [Vehicle] will be used for a Business." Id. Moreover, the Debtor's schedules state that he is self-employed as a truck driver. Doc. #20, Sched. I, Line 1. The Supreme Court in Associates Commercial Corp. v. Rash, 520 U.S. 953, 959 n.2 (1997), explained "by replacement value, we mean the price a willing buyer in the debtor's trade, business, or situation would pay a willing seller to obtain property of like age and condition." In other words, replacement value means "the cost the debtor would incur to obtain a like asset for the same 'proposed . . . use.'" Id. at 965. See In re Mayslake Village-Plainfield Campus, Inc., 441 B.R. 309, 321 n.3 (Bankr. N.D.Ill. 2010) ("§ 506(a)(2) essentially codifies the result in Rash").

The Debtor contends that the Vehicle had 800,000 miles on it as of the petition date and is worth no more than $20,000.00. Doc. #25, Lyons Decl., at ¶ 2. The Debtor bases his opinion on review of truck appraisal website estimates of "the amount of money for which this type of vehicle was being sold" and what it would cost the Debtor to buy the "same vehicle in the same condition." Id. It is generally accepted that an owner of property may testify as to his opinion of the property's value without demonstrating any additional qualifications to give opinion evidence. In re Brown, 244 B.R. 603, 611 (Bankr. W.D. Va. 2000) (citing Justice v. Pennzoil Co., 598 F.2d 1339, 1344 (4th Cir. 1979); Kestenbaum v. Falstaff Brewing Corp., 514 F.2d 690 (5th Cir. 1975); Neff v. Kehoe, 708 F.2d 639 (11th Cir. 1983); Haynes v. Glenn, 197 Va. 746, 91 S.E.2d 433 (1956)).

The Creditor contends that the replacement value of the Vehicle is $41,481.56 based on a valuation from the NADA Guide using similar year, make, model, and general features as the Vehicle. Doc. #31, Basham Decl., at ¶ 4; Doc. #32, Ex. 3. A review of the NADA Guide valuation relied upon by the Creditor shows estimated miles of zero. Doc. #32, Ex. 3. However, the Debtor has testified the Vehicle had 800,000 miles on it as of the petition date, and the Debtor reported the Vehicle with the same approximate mileage on Schedule A/B and a subsequent amendment. See Doc. ##20, 45. The court raised this discrepancy in the mileage used to produce the Debtor's and the Creditor's differing valuations of the Vehicle at the hearing on July 9, 2020. Doc. #53.

If the Debtor and the Creditor have resolved their dispute over the replacement value of the Vehicle, or if the Creditor withdraws its opposition, then the court will grant this motion. If the matter is not resolved at the hearing, then the court shall deem this to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters, and the parties shall be prepared for the court to set necessary discovery deadlines and an early evidentiary hearing.

8. 20-11149-A-13 **IN RE: RAYSHAWN LYONS**
RSW-3

MOTION TO CONFIRM PLAN
6-25-2020 [39]

RAYSHAWN LYONS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied. The Trustee's objection is sustained.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). Doc. #40. The Chapter 13 trustee (the "Trustee") has filed an objection to the Debtor's motion to confirm a modified Chapter 13 plan. Doc. #57. The Debtor responded. Doc. ##59, 64. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

LBR 3015-1(i) provides that if a Chapter 13 debtor's proposed plan will reduce or eliminate a secured claim based on the value of its collateral, the debtor must file, serve, and set for hearing a valuation motion, and the hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the court may deny confirmation of the plan. The Debtor has a pending motion to value a 2012 Freightliner Cascadia that is the collateral of Freedom Truck Finance (RSW-2). Doc. ##23, 55. The modified plan lists Freedom Truck Finance as a Class 2(B) creditor and proposes to reduce Freedom Truck Finance's secured claim based on the value of the 2012 Freightliner Cascadia. Doc. 43, § 3.08. Unless and until the valuation motion is resolved, the court cannot confirm the Debtor's modified Chapter 13 plan.

Even if and when the valuation motion is resolved, the Chapter 13 trustee has objected to confirmation of the Debtor's modified Chapter 13 plan on the merits. Doc. #57. The Trustee argues under 11 U.S.C. § 1325(a)(6), the Debtor will not be able to make all payments under the plan and comply with the plan; and under 11 U.S.C. § 1322(d), the plan impermissibly provides for payments to creditors for a period longer than 5 years. Id. The Trustee calculates that, as proposed, the modified plan would take over 74 months to fund. Bankruptcy Code section 1322(d)(1) states that "the plan may not provide for payments over a period that is longer than 5 years." Id. The Trustee states that the Debtor would need to increase monthly payments to $1,228.96 to fund the plan in 60 months. Id.

The Debtor has the burden of proving, by a preponderance of the evidence, that the plan complies with the statutory requirements of confirmation. See In re Arnold and Baker Farms, 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994). The Debtor agrees with the Trustee's argument that the plan payments must increase, but assumes that the Trustee's compensation received as a percentage of the Debtor's monthly plan payments will be reduced sometime in the next four years.

Doc. ##59, 64. The Debtor offers mere speculation that he will not need to pay as much if the Trustee's compensation is reduced sometime during the life of the plan. If the Debtor's assumption does not bear out, the proposed plan payments to creditors will be insufficient to fund within a period not exceeding 5 years. However, if the Debtor pays more than is ultimately needed to complete the plan, the Trustee will return the excess funds to the Debtor after the case is closed. However, it is not clear to the court that the Debtor can afford to increase monthly plan payments to $1,228.96 based on amended Schedules I and J that show monthly net income of only $995.00. Doc. #45.

Accordingly, it appears to the court that the Debtor has not met the burden of proof as to confirmation of the modified plan. The court is inclined to sustain the Trustee's objection and deny the Debtor's motion to confirm the modified Chapter 13 plan.

9. 19-14252-A-13 **IN RE: MICHAEL/LUCIA LOPEZ**
RSW-1

CONTINUED MOTION TO MODIFY PLAN
5-11-2020 [20]

MICHAEL LOPEZ/MV
ROBERT WILLIAMS/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.

The debtor filed and set for hearing an amended plan on July 9, 2020. Doc. #40. RSW-2 See matter #10 below. Therefore, this motion to modify the plan is denied as moot.

10. 19-14252-A-13 **IN RE: MICHAEL/LUCIA LOPEZ**
RSW-2

MOTION TO MODIFY PLAN
7-9-2020 [36]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied. The Trustee's objection is sustained.

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

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

The Chapter 13 trustee (the "Trustee") filed a timely objection pursuant to 11 U.S.C. § 1325(a)(6) to the Debtor's motion to confirm a modified plan on the basis that the Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #46. The modified plan proposes to extend its term to 84 months under the CARES Act. See 11 U.S.C. § 1329(d)(1). The Trustee contends that the modified plan, as proposed, will take a total of 89.81 months to fund. Doc. #46. The modified plan provides for monthly plan payments of $1,666.00 beginning July 25, 2020. Doc. #40, at § 7. The Trustee states that the monthly plan payments will need to increase to $1,707.00 (a $41 per month increase) effective July 2020. Doc. #46. The Debtors' amended Schedules I and J, filed on June 2, 2020, show monthly net income of only $1,674.83. See Doc. #32.

The Debtors have the burden of proving, by a preponderance of the evidence, that the plan complies with the statutory requirements of confirmation. See In re Arnold and Baker Farms, 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994).

The CARES Act, Pub.L. 116–136, added subsection (d)(1) to 11 U.S.C. § 1329 to allow Chapter 13 debtors to modify a confirmed plan, after notice and a hearing, due to COVID-19-related hardships. Bankruptcy Code section 1329(d) provides:

> (1) Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if—
>
> (A) the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID–19) pandemic; and
>
> (B) the modification is approved after notice and a hearing.
>
> (2) A plan modified under paragraph (1) may not provide for payments over a period that expires more than 7 years after the time that the first payment under the original confirmed plan was due.
>
> (3) Sections 1322(a), 1322(b), 1323(c), and the requirements of section 1325(a) shall apply to any modification under paragraph (1).

The express language of 11 U.S.C. § 1329(d)(2) requires that a plan modified pursuant to subsection (d)(1) may not provide for payments over a term that extends beyond 7 years (84 months). Here, based on the payment amounts proposed by the modified plan, the Trustee has pointed out that it would take a total of 89.81 months to fund the plan. Doc. #46. The Debtors "agree with the Trustee's calculation." Doc. #48. However, the Debtors assume that the Trustee's compensation received as a percentage of the Debtors' monthly plan payments will be reduced sometime in the next six years with the anticipated increase of filings. Id. The Debtors offer mere speculation that they will not need to pay as much if the Trustee's compensation is reduced sometime during the life of the plan. If the Debtors' assumption does not bear out, the Debtors concede that the modified plan will extend the payments beyond 84 months. If the Debtors pay more than is ultimately needed to complete the plan, the Trustee will return the excess funds to the Debtors at the close of the case. However, it is not clear to the court that the Debtors can afford to increase their monthly plan payments to $1,707.00 based on amended Schedules I and J that show monthly net income of only $1,674.83.

Accordingly, it appears to the court that the Debtors have not met the burden of proof as to confirmation of the modified plan. The court is inclined to

sustain the Trustee's objection and deny the Debtors' motion to confirm the modified Chapter 13 plan.

11. 20-11354-A-13 **IN RE: SERGIO ANDRADE**
MHM-1

MOTION TO DISMISS CASE
6-22-2020 [37]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to September 10, 2020 at 9:00 a.m.

ORDER: The court will issue an order.

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.

The Chapter 13 trustee (the "Trustee") moves to dismiss this case on the grounds that there has been unreasonable delay by the debtor that is prejudicial to creditors under 11 U.S.C. § 1301(c)(1) and the debtor has failed to cooperate in producing documents and information to the Trustee as required by 11 U.S.C. §§ 521(a)(3) and (4), which constitutes cause to dismiss under 11 U.S.C. § 1307(c).

Sergio Andrade (the "Debtor"), the debtor in this Chapter 13 case, is a sole proprietor owner-operator whose sole source of income is from his trucking business. See Doc. #47, Sched. I. The Trustee requested documents from the Debtor, and the following are still outstanding: (1) Profit and Loss Statements for the six months prior to filing; and (2) Balance Sheet and Monthly Cash Flow Statement for the 12 months prior to filing. Doc. #65.

The Debtor states that he only recently received the credit card statements needed to prepare the required statements for the Trustee, which will need to be prepared by the Debtor's counsel or a bookkeeper, and requests a continuance to September 10, 2020 at 9:00 a.m., when the Debtor has two lien avoidance motions set for hearing. Doc. #76.

Because the court intends to hear the Debtor's motion to confirm plan on September 10, 2020, the court is inclined to grant the Debtor a continuance of this matter to September 10, 2020. However, the Debtor shall be required to provide the Trustee with the Profit and Loss Statements, Balance Sheet, and Monthly Cash Flow Statements for the time periods requested no later than 5 p.m. on August 20, 2020, so that the Trustee may have sufficient time to review the information and file any additional pleadings by August 27, 2020. The Debtor shall file any reply by September 3, 2020.

12. 20-11354-A-13 **IN RE: SERGIO ANDRADE**
RSW-2

MOTION TO CONFIRM PLAN
6-26-2020 [41]

SERGIO ANDRADE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 10, 2020 at 9:00 a.m.

ORDER: The court will issue an order.

Local Rule of Practice 3015-1(i) provides that if a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the court may deny confirmation of the plan.

Section 3.08 of the Debtor's proposed plan will reduce the secured claim of Francisco Javier Avalos ("Avalos"). The Debtor has filed two motions to avoid the lien of Avalos on the Debtor's real properties under 11 U.S.C. § 522(f) (RSW-3, Doc. #51) (RSW-4, Doc. #56), both set for hearing on September 10, 2020 at 9:00 a.m. Accordingly, the Debtor's motion to confirm the modified plan will be continued to be heard in conjunction with the Debtor's lien avoidance motions.

13. 19-12660-A-13 **IN RE: JORGE/MELISSA VELEZ**
RSW-1

CONTINUED MOTION TO MODIFY PLAN
5-12-2020 [59]

JORGE VELEZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted. The Trustee's objection is overruled.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The court continued the hearing on this motion from July 9, 2020 to allow the Debtors time to respond to the objection by the Chapter 13 trustee (the "Trustee"). This matter will proceed as scheduled.

The Trustee objects to the motion by Jorge Luis Velez and Melissa Velez (the "Debtors") to confirm a modified plan on the grounds that the modified plan has

not been proposed in good faith as required by 11 U.S.C. § 1325(a)(3), and/or the Debtors' filing of the petition was in bad faith under 11 U.S.C. § 1325(a)(7). Doc. #67. The Trustee argues that the modified plan proposes to reduce the dividend to unsecured creditors from 100% under the plan confirmed on October 10, 2019, to 0% over an extended 84-months period despite Mr. Velez stating that he expected his income to increase and to be able to afford higher plan payments by the time of the hearing or in the next few months. Id.

In his declaration in support of confirmation, Mr. Velez states the Debtors need to modify their confirmed plan because their income has been greatly affected by COVID-19 and the Debtors fell behind with the plan payments. Doc. #61, Velez Decl., at ¶ 4. At the time of filing, Mr. Velez worked in the oilfields as a rig supervisor and had a gross monthly income of $7,930.00 and received a $900.00 monthly allowance for his truck, resulting in monthly income after deductions of $6,018.46. Id.; Doc. #1, Sched. I, Lines 1, 4, 8h, 10, and 12. Mrs. Velez is a homemaker. Doc. #1. Mr. Velez states in his declaration that on March 15, 2020, he was demoted from supervisor and has been working hourly, an average of four 8-hour days each week. Doc. #61, Velez Decl., at ¶ 4. Mr. Velez states he is no longer receiving the $900.00 monthly allowance for his truck. Id. On May 27, 2020, the Debtors filed an amended Schedule I that lists Mr. Velez's occupation as operator with gross monthly income of $6,314.00. Doc. #65. On July 23, 2020, the Debtors filed a response to the Trustee's objection and included a copy of Mr. Velez's most recent paystub showing gross pay of $2,702.63 for a two-week pay period. Doc. #72.

The CARES Act, Pub.L. 116–136, added subsection (d)(1) to 11 U.S.C. § 1329 to allow Chapter 13 debtors to modify a confirmed plan, after notice and a hearing, due to COVID-19-related hardships. Bankruptcy Code section 1329(d) provides:

> (1) Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if—
>
> > (A) the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID–19) pandemic; and
> >
> > (B) the modification is approved after notice and a hearing.
>
> (2) A plan modified under paragraph (1) may not provide for payments over a period that expires more than 7 years after the time that the first payment under the original confirmed plan was due.
>
> (3) Sections 1322(a), 1322(b), 1323(c), and the requirements of section 1325(a) shall apply to any modification under paragraph (1).

The court has reviewed Mr. Velez's response, and if the attachment is a true and correct copy of Mr. Velez's latest paystub, then subtracting payroll deductions from gross pay suggests Mr. Velez is taking home approximately the monthly income of $4,074.08 that the Debtors listed on amended Schedule I. See Doc. #65, Amended Sched. I, Lines 10 and 12. This would represent a $1,944.38 reduction in the Debtor's monthly take home pay. The Debtors appear to have reduced monthly expenses from the time of filing, and amended Schedule J shows monthly expenses of $2,091.33. Doc. #65, Amended Sched. J, Line 22c. This leaves the Debtors with monthly net income of only $1,982.75, which is a $828.74 reduction from their originally scheduled monthly net income of $2,811.49. Doc. ##1, 65. The court is inclined to find the Debtors have experienced and may still be experiencing a material financial hardship due to

COVID-19, and that the modified plan was brought in good faith to reflect the economic reality that the Debtors cannot currently afford the payments under their confirmed plan. Likewise, the court is not inclined to find bad faith on the part of the Debtors in filing this bankruptcy case where they had confirmed a plan that they have to modify because of material financial hardship.

The confirmed plan provided for monthly payments of $2,056.00. Doc. #2. The modified plan proposes payments over 84 months, requiring the Debtors to make $19,424.00 in plan payments through April 2020, plan payments of $1,500.00 per month beginning May 2020, and increasing to $1,983.00 per month starting July 2020. Doc. #63, at § 7. This appears to commit all of the Debtors' projected disposable income towards monthly payments under the modified plan. However, the Trustee objects to the modified plan because Mr. Velez's declaration states that Mr. Velez expects "things should pick up by mid-summer and we will be working regular hours again." Doc. #61, Velez Decl., at ¶ 4. The Trustee is concerned the modified plan seeks to reduce the dividend to unsecured creditors to 0% over the life of an 84-month plan when Mr. Velez expects his income to have recovered by now or within the next few months. Doc. #67. The court disagrees with the Trustee's implication that the Debtors' projected disposable income, and thus payments to their creditors, will be set in stone by confirming the modified plan regardless of what happens to the Debtors' income over the life of their now 84-month plan.

The court finds that the Bankruptcy Code provides the Trustee with the authority to seek modification of the Debtors' Chapter 13 plan based upon changes in Debtors' disposable income. Bankruptcy Code section 1329(a) deals with modification of the plan after confirmation and provides:

> (a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—
>
> (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
>
> (2) extend or reduce the time for such payments;
>
> (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or
>
> (4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor (and for any dependent of the debtor if such dependent does not otherwise have health insurance coverage) . . . .

Section 1329(b)(1) further provides that "Sections 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section." Although section 1329 does not specifically incorporate section 1325(b), which requires a plan provide that "all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan," other provisions in the Bankruptcy Code support the requirement that debtors must pay all their projected disposable income to their unsecured creditors over the life of the plan.

If the Debtors experience a recovery in their financial situation or have an increase in income, section 1329(a) allows the Debtors, the Trustee, or any unsecured creditor with an allowed claim to bring a motion to modify the plan to increase the amount of payments. The Debtors have offered to provide copies of Mr. Velez's paystubs to the Trustee on a periodic basis to allow the Trustee to verify any increases in income. Doc. #72. The Trustee argues the Debtors are trying to shift the burden of proving that the plan complies with the statutory requirements of confirmation onto the Trustee. Doc. #74. However, the court disagrees with the Trustee's contention. As discussed above, the court is inclined to find the Debtors have met their burden with respect to confirmation of this modified plan. If the Debtors' income has increased or will increase at some point in the next six years, the Bankruptcy Code contemplates the Trustee obtaining such information. Section 521(f)(1) of the Bankruptcy Code expressly allows the Trustee, or any party in interest, to request and obtain copies of the Debtors' post-petition tax returns. Section 521(f)(4) requires the Debtors to provide the Trustee with updated income and expense reports upon request. These provisions recognize that a debtors' financial situation may change, and it follows that the right of the Trustee to obtain such information allows the Trustee to seek a post-confirmation increase in plan payments based upon the information he receives.

Accordingly, the court is inclined to grant the Debtors' motion to confirm their modified plan and overrule the Trustee's objection. The confirmation order shall require Debtors to submit their paystubs to the Trustee every six months, commencing six months after the entry of the order confirming their modified plan and continuing through the term of the plan. The confirmation order also shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

14. 20-11576-A-13 **IN RE: DANIEL MADRIAGA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-6-2020 [30]

PHILLIP GILLET/ATTY. FOR DBT.
DISMISSED 7/10/20

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on July 10, 2020, Doc. #38. The Order to Show Cause will be dropped as moot. No appearance is necessary.

15. 17-10578-A-13 **IN RE: OSCAR/NATALIE VILLAGOMEZ-LEMUS**
TCS-5

CONTINUED MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), NA
6-1-2020 [106]

OSCAR VILLAGOMEZ-LEMUS/MV
TIMOTHY SPRINGER/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 15, 2020. Doc. #133.

16. 18-12678-A-13 **IN RE: MICHAEL PFEIFFER**
DMG-3

CONTINUED MOTION TO MODIFY PLAN
6-2-2020 [76]

MICHAEL PFEIFFER/MV
D. GARDNER/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.

This motion is DENIED AS MOOT. The Debtor filed an amended plan on July 30, 2020, which is set for hearing on September 10, 2020. See DMG-4, Doc. ##96-102.

17. 20-11082-A-13 **IN RE: AURORA PAYAN**
PK-2

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
6-30-2020 [37]

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

In this Chapter 13 case, Patrick Kavanagh, attorney for debtors Aurora Payan, has applied for an allowance of interim compensation and reimbursement of expenses. Doc. #37. The applicant requests that the court allow compensation in the amount of $4,140.00 and reimbursement of expenses in the amount of $65.05, totaling $4,205.05, for services rendered from February 18, 2020 through June 30, 2020. Id.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See id. § 330(a)(3). The services rendered for the relevant time period of this application include, without limitation, pre-petition counseling and fact gathering; preparing and filing of the voluntary petition, schedules and forms; preparing for and attending the 341 meeting of creditors; claims administration; and preparing, filing, and getting the Chapter 13 plan confirmed at hearing. Doc. #37. The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis.

This motion is GRANTED. The court allows interim compensation in the amount of $4,140.00 and reimbursement of expenses in the amount of $65.05 to be paid in a manner consistent with the terms of the confirmed plan.

18. 18-13385-A-13 **IN RE: MARIDETTE SCHLOE**
PLG-1

MOTION TO MODIFY PLAN
7-6-2020 [53]

MARIDETTE SCHLOE/MV
STEVEN ALPERT/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

19. 19-10791-A-13 **IN RE: JASON/RANDI PATTERSON**
RSW-3

MOTION TO SELL
7-23-2020 [51]

JASON PATTERSON/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
OST 7/24/19

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

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3) and an order shortening time and will proceed as scheduled. See Doc. #59. Unless opposition is presented at the hearing and subject to overbids, the court intends to enter the defaults of respondents who were served. 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.

Jason Randall Patterson and Randi Jaylene Patterson (the "Debtors") move pursuant to 11 U.S.C. § 363(b)(1) for authority to sell real property of the estate commonly known as 10335 Cheyenne Drive, Bakersfield, California 93312 (the "Property"), to Ronnald E. Garside II (the "Buyer") for the purchase price of $328,000.00, subject to overbid and the court's approval. Doc. #51.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Bankruptcy Code section 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." Section 1302(b)(1) excludes from a chapter 13 trustee's duties the collection of estate property and reduction of estate assets to money. Therefore, the Debtors have the authority to sell estate property under section 363(b).

Proposed sales under section 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. Ala. 2018), citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996) (citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under section 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" Id. at 889-90, citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007) (citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998)).

The Debtors' moving papers include the declaration of Randi Patterson, attesting that she and her husband own the Property, on which they owe approximately $287,215.00 secured by a deed of trust in favor of Ditech Financial LLC ("Ditech"). Doc. #53. The Debtor says they have received an offer from the Buyer for the purchase price of $328,000.00, with the Debtors paying $4,000.00 in closing costs. Id. It would appear subtracting the expected costs of sale, the proceeds would be sufficient to pay off Ditech with net proceeds to the Debtors.

Unless opposition is presented and subject to overbids at the hearing, the court is inclined to grant the motion. The sale of the Property appears to be in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith.

20. 18-14493-A-13 **IN RE: ALICIA GOMEZ**
RSW-4

MOTION TO MODIFY PLAN
6-18-2020 [72]

ALICIA GOMEZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

9:30 AM

1. 09-13733-A-13 **IN RE: MATHEW RODRIGUEZ**
   20-1012

   CONTINUED STATUS CONFERENCE RE: COMPLAINT
   2-25-2020 [1]

   RODRIGUEZ V. BASSETT'S PRIME
   MONEY LENDERS, INC.
   PATRICK KAVANAGH/ATTY. FOR PL.
   DISMISSED 7/22/20

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on July 22, 2020. Doc. #13.

1. 19-13006-A-7 **IN RE: FERNANDO/CARMEN PORTILLO**
JMV-1

MOTION TO SELL
7-16-2020 [59]

JEFFREY VETTER/MV
VINCENT GORSKI/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Jeffrey Vetter, the Chapter 7 Trustee (the "Trustee") of the bankruptcy estate of Fernando Luis Portillo and Carmen Calistro Portillo (the "Debtors"), moves pursuant to 11 U.S.C. § 363(b), (d), and (f) for authority to sell the estate's interest in a 2013 Ford F150 (the "Vehicle") to Fernando Luis Portillo for $13,550.00 subject to overbid for higher and better offers at the hearing and the court's approval. Doc. #59.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under section 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. Ala. 2018), citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996) (citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under section 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" Id. at 889-90, citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007) (citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998)).

The Debtors' amended Schedule A/B lists the Vehicle as property of the estate and values the Vehicle at $14,875.00. See Doc. #47. The Debtors claimed an exemption of $1,325.00 in the Vehicle under California Code of Civil Procedure § 704.010 on amended Schedule C. See id. The Vehicle is encumbered by a lien of

about $1,884.00 in favor of Ford Motor Credit Company. See Doc. #1, Sched. D, Line 2.1.

The Trustee has determined that the Vehicle has approximately 23,000 miles and has an approximate value of $17,500.00 based on vehicle pricing in the NADA guide for comparable vehicles of make, model, age, mileage, and condition. Doc. #61, Tr.'s Decl. at ¶ 4. The Trustee's investigation of other online auto sales directories resulted in approximately the same valuations. Id. at ¶ 5. The Trustee has considered liquidating the Vehicle through a public sale and/or auction, but recognizes the risk of receiving a lesser amount for the estate, considering standard costs of sale of approximately $2,625.00 (15% of $17,500.00), less the Debtors' exemption of $1,325.00, and less the lien of $1,884.00, the estate might net $11,666.00. Id. at ¶¶ 6-7. Fernando Luis Portillo has offered to purchase the estate's interest in the Vehicle for $13,550.00, and the Trustee is in possession of the full purchase amount for and proof of insurance on the Vehicle. Id. at ¶¶ 3, 7. The sale is subject to overbids at the hearing starting at $17,259.00, and proceeding in $500.00 increments, to ensure the estate will receive a higher and better price. Id. at ¶ 8.

It appears that the sale of the Vehicle is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. Accordingly, unless opposition is presented at the hearing and subject to overbids, the court intends to grant the Trustee's motion.

2. 19-14310-A-7 **IN RE: TRACY FLAHERTY**
UST-1

MOTION TO DISMISS CASE
7-2-2020 [85]

TRACY DAVIS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
TREVOR FEHR/ATTY. FOR MV.
CONTINUED TO 10/8/20, DOC #94

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

DISPOSITION: Continued to October 8, 2020, at 10:00 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss was continued to October 8, 2020, at 10:00 a.m. by an order entered on August 3, 2020. Doc. #95.

3. 20-11934-A-7 **IN RE: CHRISO'S TREE TRIMMING, INC.**
JMV-2

MOTION TO SELL
7-16-2020 [20]

JEFFREY VETTER/MV
JAMES MILLER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

Jeffrey Vetter, the Chapter 7 Trustee (the "Trustee") of the bankruptcy estate of Chriso's Tree Trimming, Inc. (the "Debtor"), moves pursuant to 11 U.S.C. § 363(b)(1) to sell certain assets of the estate at public auction on August 15, 2020.

The assets of the estate include, but are not limited to:

- 1998 International: Chip Truck
- 1999 GMC Bucket Truck
- 2000 GMC Pickup
- 2001 Ford F650 Super Duty
- 2003 International 4400
- 2005 GMC Savana 3500
- 2006 GMC C7500
- 2006 Dodge Ram 1500
- 2007 FRRHT Grapple Truck
- 2007 Brush Chip Truck
- 2009 Kenworth T800
- 2009 F150 Super Cab
- 2009 Chevrolet Silverado 2500 HD
- 2011 Dodge Ram 1500 Super Cab
- 2011 Ford 150 Super Cab
- Bandit Model 90x Brush Chipper

(collectively, the "Estate Assets").

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under section 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. Ala. 2018), citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996) (citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under section 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" Id. at 889-90, citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007) (citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998)).

The Trustee believes the estate will obtain the best and highest price by selling the Estate Assets at public auction. Doc. #22, Tr.'s Decl. at ¶¶ 3-4. According to the Debtor's schedules, the Estate Assets are not encumbered or exempt. Id. at ¶ 2; see also Doc. #12, Sched. D. The Trustee believes the Estate Assets will sell for approximately $50,000.00. Doc. #22, Tr.'s Decl. at ¶ 2. The Trustee has employed Gould Auction and Appraisal Company (the "Auctioneer") to advertise, manage, and conduct an auction of the Estate Assets on its premises located at 6200 Price Way, Bakersfield, California 93308 on August 15, 2020, at 9:00 a.m. Doc. ##19, 20.

Pursuant to an agreement between the Trustee and the Auctioneer, and the court's order authorizing the employment of the Auctioneer, the Auctioneer will receive a commission of 15% of the gross proceeds of the sale of the Estate Assets, in addition to a 10% buyer's premium to be paid by the buyer(s). Doc. ##19, 20. Buyer(s) who utilize the Proxibid online service will pay an additional 3% fee to Proxibid. Id. The Auctioneer will also receive an expense reimbursement of $2,700.00 for pickup and storage of the Estate Assets and may seek authorization of the court for reimbursement of extraordinary expenses not to exceed $2,500.00. Id.

It appears that the sale of the Estate Assets will obtain the highest and best prices for the estate at public auction, and is in the best interests of the estate, supported by a valid business judgment, and proposed in good faith. Accordingly, the motion is GRANTED.

4. 20-10582-A-7 **IN RE: BRIAN DUMONT**
DMG-1

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
6-23-2020 [16]

BRIAN DUMONT/MV
D. GARDNER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order in conformance with the ruling below.

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). 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. This matter will proceed as scheduled for the Debtor to clarify the record.

Brian William Dumont (the "Debtor"), the debtor in this Chapter 7 case, moves pursuant to 11 U.S.C. § 522(f)(1) to avoid a judicial lien on his residential real property commonly known as 1312 Telegraph Avenue, Bakersfield, California 93305 (the "Property"). Doc. #16.

The motion seeks the avoidance of the judicial lien of WELLS FARGO BANK, N.A. as reflected in the abstract of judgment recorded in Kern County as Doc. #2191**2**7515. Elsewhere, the prayer for relief in the motion seeks the avoidance of the lien of BMO HARRIS, NA reflected on a document number 219041910, and the Debtor's declaration cites another abstract of judgment recorded by WELLS FARGO BANK, NA as document number 0208122024. A true and correct copy of the abstract of judgment that appears to be the subject of this motion is included as an exhibit and shows that WELLS FARGO BANK, N.A. ("Creditor") recorded a judgment for $5,967.68 in Kern County as Doc. #2191**3**7515. Doc. #19, Ex. A. Service of the moving papers was made on the CEO of Wells Fargo N.A. by certified mail in compliance with Federal Rule of Bankruptcy Procedure ("FRBP") 7004(h), made applicable to contested matters by FRBP 9014(b). Doc. #20.

The court is inclined to grant the motion if the Debtor can explain the above inconsistencies and clarify the record to the court's satisfaction.

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

A judgment was entered against the Debtor in the amount of $5,967.68 in favor of Creditor on April 12, 2019. Doc. #19, Ex. A. An abstract of judgment was recorded with Kern County on October 21, 2019. Id. That lien attached to the Debtor's interest in the Property. Id. at Exs. A-B. The Debtor values his interest in the Property at $150,000.00, subject to the unavoidable lien of Mr. Cooper in the amount of $109,394.69, and the Debtor's claim of exemption under California Code of Civil Procedure § 704.730 of $75,000.00. Id. at Exs. C-D. The Debtor states that the approximate balance owed on the judicial lien is $6,500.00. Doc. #18, Dumont Decl. at ¶ 3. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the Property and its fixing will be avoided.

If the Debtor can clarify what is the judicial lien he seeks to avoid, the Debtor will have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1).

5. 20-11198-A-7 **IN RE: JESSIE BARAJAS**
EAT-1

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
7-9-2020 [19]

KINECTA FEDERAL CREDIT UNION/MV
EMMANUEL FOBI/ATTY. FOR DBT.
MARK BLACKMAN/ATTY. FOR MV.
DISCHARGED 7/21/20

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

DISPOSITION: Granted in part and denied as moot in part.

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

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.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED IN PART AS MOOT as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on July 21, 2020. Doc. #25. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Kinecta Federal Credit Union (“Movant”), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Chevrolet Silverado (“Vehicle”). Doc. #19.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. “Because there is no clear definition of what constitutes ‘cause,’ discretionary relief from the stay must be determined on a case by case basis.” In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

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

After review of the included evidence, the court finds that “cause” exists to lift the stay because debtor has been in default since June 2, 2020. Doc. #22.

The court also finds that the debtor does not have any equity in the property and the property is not necessary to an effective reorganization because the debtor is in chapter 7. Debtor has valued the Property at $36,000.00. Doc. #1. The amount owed to Movant is $37,772.84. Doc. #19.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

1. 18-14920-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA GENERAL PARTNERSHIP**
20-1034

RESCHEDULED STATUS CONFERENCE RE: COMPLAINT
6-5-2020 [1]

SOUSA V. FRED AND AUDREY SCHAKEL AS TRUSTEES OF THE
RONALD CLIFFORD/ATTY. FOR PL.
CONTINUED FROM 8/12/20

NO RULING.

2. 18-14920-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA GENERAL PARTNERSHIP**
20-1034 BBR-1

AMENDED MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
7-6-2020 [21]

SOUSA V. FRED AND AUDREY SCHAKEL AS TRUSTEES OF THE
KALEB JUDY/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied in part with respect to the first, third through sixth, thirteenth and fourteenth causes of action and granted in part with leave to amend with respect to the second and seventh through thirteenth causes of action.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order in conformance with the ruling below.

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.

On July 6, 2020, Defendants Fred and Audrey Schakel as Trustees of the Schakel Family Trust, Dated November 5, 1996 ("Trust"), Manuel Rodrigues, Patricia Rodrigues, Ryan Schakel, Kristin Schakel, Fred Schakel, Audrey Schakel, South Lakes Dairy, L.P., SKD GP, LLC, and Schakel Family Partnership, L.P. ("Landlord") (collectively, "Defendants") filed a motion to dismiss the claims of Plaintiff David M. Sousa, Chapter 7 Trustee of South Lakes Dairy Farm ("Plaintiff"), with prejudice (the "Motion") pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6), as incorporated by Federal Rule of Bankruptcy Procedure ("FRBP") 7012. By the Motion, Defendants seek to dismiss all fourteen causes of action plead in the complaint filed by Plaintiff on June 5, 2020 ("Complaint"). Doc. #1. The Motion was accompanied by a memorandum of points and authorities in support of the Motion ("MPA") as well as exhibits and

request for judicial notice. Doc. #21, 22, 23. Plaintiff filed a timely opposition. Doc. #29. Defendants timely replied ("Reply"). Doc. #37.

For the reasons set forth below, the Motion will be DENIED with respect to the first, third through sixth, thirteenth and fourteenth causes of action because the Complaint adequately sets forth sufficient factual allegations, accepted as true for purposes of the Motion, to state a claim for each of those causes of action. The Motion will be GRANTED WITH LEAVE TO AMEND with respect to the second and seventh through thirteenth causes of action because the Complaint does not adequately set forth sufficient factual allegations, accepted as true for purposes of the Motion, to state a claim for each of those causes of action.

As an initial procedural matter, Defendants filed exhibits and request for judicial notice in support of the Motion ("RJN"). Doc. #23. In reviewing a motion to dismiss under FRCP 12(b)(6), "a court may consider the allegations in the complaint; exhibits attached to the complaint or incorporated therein by reference; matters in which judicial notice may be taken; and documents of which plaintiff has notice and on which it relied in bringing its claim or that are integral to its claim." Enron Corp. v. Credit Suisse First Boston Int'l (In re Enron), 328 B.R. 58, 65 (Bankr. S.D.N.Y. 2005) (citations omitted). Here, the Complaint references and quotes from the Plan of Reorganization Dated September 17, 2013 (see, e.g., Complaint ¶¶ 19-22), as well as the Modification and Renewal of Farm Lease (see, e.g., Complaint ¶¶ 34-35) that are Exhibits B and D, respectively, of the RJN, so the court may consider those documents. It is not readily apparent that Plaintiff relies on the Disclosure Statement Dated May 9, 2013, and the Order Granting Motion to Assume Nonresidential Real Property Lease with Lessor, Schakel Family Partnership, L.P. as Modified that are Exhibits A and C, respectively, of the RJN, so the court will not consider those documents in reviewing the Motion.

APPLICABLE LAW

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation omitted). "In considering a Fed. R. Civ. P. 12(b)(6) motion to dismiss for failure to state a claim for relief, the court accepts as true all material facts alleged in the complaint and draws all reasonable inferences in favor of the plaintiff. The motion to dismiss is granted only if no set of facts can be established to entitle the plaintiff to relief." Enron, 328 B.R. at 64 (citations omitted).

"Courts take a liberal approach when reviewing allegations of fraud pled by a trustee because, as an outside party to the transactions in issue, the trustee must plead the claim of fraud for the benefit of the estate and its creditors based upon second-hand knowledge." Id. at 73 (citation omitted); see also Miller v. Greenwich Capital Fin. Prods. (In re Am. Bus. Fin. Servs.), 362 B.R. 135, 142 ("A bankruptcy trustee, as a third party outsider to the debtor's transactions, is generally afforded greater liberality in pleading fraud."). When alleging fraud, "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b), as incorporated by Fed. R. Bankr. P. 7009.

FIRST CAUSE OF ACTION

The first cause of action asserts breach of fiduciary duty claims against all Defendants except Landlord as general partners, officers and managers of South Lakes Dairy Farm ("Debtor").

Defendants contend that the general partners do not breach their fiduciary duties with respect to the partnership if the partnership consented to the act and the partners consent if the pertinent facts are disclosed to the other partners and the partners agree. MPA at 7:19-24.

"Partnership is a fiduciary relationship, and partners may not take advantages for themselves at the expense of the partnership." Enea v. Superior Court, 132 Cal. App. 4th 1559, 1564 (2005). California Corporations Code section 16404(a) provides that "[t]he fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care" as set forth in California Corporations Code sections 16404(b) and 16404(c). "In addition, an obligation of good faith and fair dealing is imposed on partners." Enea, 132 Cal. App. 4th at 1565 (citation omitted). That obligation is with respect to both the partnership as well as other partners. Cal. Corp. Code § 16404(d).

The Complaint alleges that the general partners of the Debtor usurped certain opportunities from the Debtor for no consideration and for the personal benefit of the general partners, including terminating a lease between the Debtor and the Landlord (which is owned entirely by two of the Debtor's former general partners) and entering into a new lease with a third party for a substantial increase in the monthly rent, diverting funds for their own personal benefit, through excessive compensation and rent payments, and entering into a loan the Debtor would not be able to repay that also released personal guarantees of two general partners of the Debtor.

Simply because all of the partners may have consented to an action taken by a general partnership does not mean that the action did not breach a fiduciary duty the partners owed to the partnership. The court believes the Complaint adequately sets forth sufficient factual allegations, accepted as true for purposes of the Motion, to state a claim for breach of fiduciary duty owed by the general partners of the Debtor, and the Motion is denied as to this cause of action.

SECOND CAUSE OF ACTION

The second cause of action asserts breach of fiduciary duty claims by abuse of control against all Defendants except Landlord.

Defendants contend that breach of fiduciary duty for "abuse of control" is not a cognizable claim for relief under California Corporations Code section 16404 or any other California law. Plaintiff does not counter this assertion in its opposition, and the court knows of no legal authority to support such a claim. Accordingly, the court grants the motion with respect to the second cause of action with leave to amend if Plaintiff can support such a cause of action with respect to a general partnership.

THIRD CAUSE OF ACTION

The third cause of action asserts gross negligence claims against all Defendants except Landlord.

Defendants contend that the allegations of the Complaint do not give rise to any level of negligence, much less gross negligence. MPA at 9:26 – 10:8.

The same allegations that give rise to the adequate pleading of the breach of fiduciary duty claims in the first cause of action, which includes breach of the duty of care under California Corporations Code section 16404(c), supports the gross negligence claims asserted in the third cause of action.

Accordingly, the court believes the Complaint adequately sets forth sufficient factual allegations, accepted as true for purposes of the Motion, to state a claim for gross negligence against the Debtor's general partners, and the Motion is denied as to this cause of action.

FOURTH CAUSE OF ACTION

The fourth cause of action asserts conversion claims against all Defendants.

Defendants contend that there can be no conversion cause of action because (1) the Debtor consented to all of the acts that are the basis for the Complaint, (2) the Complaint asserts that the Defendants converted interests in real property, and (3) any conversion claims are limited to amounts paid within the last three years before the Complaint was filed. MPA at 10:15-28. In the Reply, Defendants assert that only claims accruing prior to December 2015 would be time barred. Reply at 9:28.

The court believes Plaintiff adequately pleads conversion claims in his fourth cause of action based on the following. First, the Complaint asserts that the Debtor did not consent to the acts that are the basis of the fourth cause of action. See, e.g., Complaint ¶ 41. Second, under California law, tangible as well as intangible property interests can be converted. Voris v. Lambert, 7 Cal. 5th 1141, 1151 (2019). Here the Complaint alleges that Defendants wrongfully converted rent payments, contract rights under a lease, and excessive salary payments, Complaint ¶ 85. The court believes that these allegations can form the basis for a conversion cause of action. Finally, Plaintiff is the Chapter 7 trustee of the Debtor's bankruptcy estate, that was filed as a voluntary Chapter 7 case on December 11, 2018, so Plaintiff would not have been able to discover the estate's claims until that date at the earliest. Complaint ¶ 66. Accordingly, the Motion is denied as to this cause of action.

FIFTH CAUSE OF ACTION

The fifth cause of action asserts unjust enrichment claims against defendants Manuel Rodrigues, Patricia Rodrigues, Ryan Schakel, Kristen Schakel, Fred Schakel, and Landlord.

Defendants contend there is doubt as to whether unjust enrichment is a claim under California law and, even if it was a claim, such a claim only arises if Plaintiff can show that Defendants breached their fiduciary duties owed to the Debtor. MPA at 11:2-19; Reply 9:22-25.

The Ninth Circuit has allowed unjust enrichment as an independent cause of action acknowledging that case law on the availability of such a cause of action under California law is unsettled. ESG Capital Partners, LP v. Stratos, 828 F.3d 1023, 1038 (9th Cir. 2016).

"To allege unjust enrichment as an independent cause of action, a plaintiff must show that the defendant received and unjustly retained a benefit at the plaintiff's expense." Id. The court believes the Complaint adequately sets forth sufficient factual allegations, accepted as true for purposes of the Motion, to state a claim for unjust enrichment against certain general partners and the Landlord, so the Motion will be denied as to the fifth cause of action.

SIXTH CAUSE OF ACTION

The sixth cause of action asserts avoidance and recovery of fraudulent transfers under 11 U.S.C. §§ 548(a)(1)(A) and (B) against defendant Landlord.

Specifically, the Complaint alleges that Landlord received $416,000 in payments from Debtor that exceeded the rent owed by the Debtor between May 1, 2017, and July 6, 2018. Complaint ¶ 94.

Defendants contend that the Complaint does not meet the heightened pleading standards for a claim of actual fraud under FRCP 9(b) and that the written lease with the Landlord did not provide that the Debtor would pay Landlord exactly $140,000 per month. MPA at 2:12 - 4:8.

The court believes Plaintiff adequately pleads avoidance and recovery of fraudulent transfers claims in his sixth cause of action based on the following. First, the Complaint asserts that the Debtor only paid more than $140,000 in rent between May 1, 2017, and July 6, 2018. Complaint ¶¶ 33 and 35. Landlord only started charging additional rent from the Debtor after two of Landlord's three general partners were released from personal guarantees with respect to the secured debt of Debtor. Complaint ¶¶ 9, 10, 46 and 49. These allegations, taken as true for purposes of the Motion, are sufficient to plead actual fraud by Plaintiff. Second, it is not clear from the language of the Lease Modification that the Debtor had to pay any charges other than the $140,000 in rent, so the Complaint adequately sets forth sufficient factual allegations, accepted as true for purposes of the Motion, to state a claim for avoidance and recovery of fraudulent transfers under 11 U.S.C. §§ 548(a)(1)(A) and (B) against defendant Landlord. Accordingly, the Motion is denied as to the sixth cause of action.

SEVENTH CAUSE OF ACTION

The seventh cause of action asserts avoidance and recovery of fraudulent transfers under 11 U.S.C. § 548(b) against defendant Fred Schakel.

Defendants contend that the Complaint does not allege that the Debtor was insolvent when Fred Schakel received salary payments and he was a general partner of the Debtor, and in fact the Complaint asserts that the Debtor's assets exceeded its liabilities during the relevant time period by approximately $5 million, so Plaintiff has not stated a claim under 11 U.S.C. § 548(b). MPA at 6:1-11.

Bankruptcy Code section 548(b) provides that "[t]he trustee of a partnership debtor may avoid a transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation." 11 U.S.C. § 548(b).

The Complaint fails to allege specific facts show that the Debtor was insolvent or became insolvent because of each transfer made to Fred Schakel between December 11, 2016 and March 15, 2017 ("Fred Schakel 548(b) Transfers"). While the Complaint alleges that the Debtor was in default of the covenants of the 2014 loan with Wells Fargo Bank, N.A. ("2014 Loan") by September 30, 2016, and unable to repay the 2014 Loan by the maturity date of January 24, 2017 (Complaint ¶ 47), there are no allegations that specific Fred Schakel 548(b) Transfers were made when the Debtor was insolvent or caused the Debtor to become insolvent. Accordingly, the court grants the Motion with respect to the seventh cause of action with leave to amend.

EIGHTH CAUSE OF ACTION

The eighth cause of action asserts avoidance and recovery of fraudulent transfers under 11 U.S.C. § 548(a) against defendant Fred Schakel.

Defendants contend that the Complaint does not allege actual fraud or that Debtor did not receive reasonably equivalent value for the salary of Fred Schakel. MPA at 4:13-16. Moreover, because Plaintiff acknowledges that Fred Schakel was a full-time employee, his salary payments are generally presumed to be made for fair consideration and in the ordinary course of business. MPA at 4:17-27. Accordingly, Defendants contend that Plaintiff must establish that the salaries were made in bad faith or excessive, citing Pryor v. Tiffen (In re TC Liquidations LLC), 463 B.R. 257, 268 (Bankr. E.D.N.Y. 2011). MPA at 5:3-6. In addition, Defendants contend that the Complaint fails to allege dates and amounts of each individual transfer, and based on other facts alleged, it appears that Debtor was not insolvent on the dates of many of the transfers. MPA at 5:17-22.

The Complaint fails to allege specific facts show that the Debtor paid Fred Schakel more than $8,000 gross income per month for his services to the Debtor between December 11, 2016 and December 11, 2018 ("Fred Schakel 548(a) Transfers"). The Complaint merely states that Fred Schakel took an average monthly salary of $10,578.23 between November 1, 2013 and June 29, 2018. Complaint ¶ 43(a). There are no allegations in the Complaint that the Fred Schakel 548(a) Transfers made between December 11, 2016 and June 29, 2018 related to wages paid to Fred Schakel exceeded the $8,000 gross income per month permitted in the Debtor's confirmed chapter 11 plan.

Moreover, the Complaint fails to allege specific facts to show that the Fred Schakel 548(a) Transfers were made with the intent to hinder, delay or defraud an entity to which the Debtor was or became indebted to on or after the date on which each Fred Schakel 548(a) transfer was made.

Finally, the Complaint fails to allege specific facts to show that the Debtor was insolvent or became insolvent because of each of the Fred Schakel 548(a) Transfers. While the Complaint alleges that the Debtor was in default of the covenants of the 2014 Loan by September 30, 2016, and unable to repay the 2014 Loan by the maturity date of January 24, 2017 (Complaint ¶ 47), there are no allegations that specific Fred Schakel 548(a) Transfers were made when the Debtor was insolvent or caused the Debtor to become insolvent.

Accordingly, the court grants the Motion with respect to the eighth cause of action with leave to amend.

NINTH CAUSE OF ACTION

The ninth cause of action asserts avoidance and recovery of fraudulent transfers under 11 U.S.C. § 548(b) against defendants Manuel and Patricia Rodrigues.

Defendants contend that the Complaint does not allege that the Debtor was insolvent when Manuel and Patricia Rodrigues received salary payments and they were general partners of the Debtor, and in fact the Complaint asserts that the Debtor's assets exceeded its liabilities during the relevant time period by approximately $5 million, so Plaintiff has not stated a claim under 11 U.S.C. § 548(b). MPA at 6:1-11.

Bankruptcy Code section 548(b) provides that "[t]he trustee of a partnership debtor may avoid a transfer of an interest of the debtor in property, or any

obligation incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation." 11 U.S.C. § 548(b).

The Complaint fails to allege specific facts show that the Debtor was insolvent or became insolvent because of each transfer made to Manuel and Patricia Rodrigues between December 11, 2016 and March 15, 2017 ("Rodrigues 548(b) Transfers"). While the Complaint alleges that the Debtor was in default of the covenants of the 2014 Loan by September 30, 2016, and unable to repay the 2014 Loan by the maturity date of January 24, 2017 (Complaint ¶ 47), there are no allegations that specific Rodrigues 548(b) Transfers were made when the Debtor was insolvent or caused the Debtor to become insolvent.

Accordingly, the court grants the Motion with respect to the ninth cause of action with leave to amend.

TENTH CAUSE OF ACTION

The tenth cause of action asserts avoidance and recovery of fraudulent transfers under 11 U.S.C. § 548(a) against defendants Manuel and Patricia Rodrigues.

Defendants contend that the Complaint does not allege actual fraud or that Debtor did not receive reasonably equivalent value for the salaries of Manuel and Patricia Rodrigues. MPA at 4:13-16. Moreover, because Plaintiff acknowledges that Manuel and Patricia Rodrigues were full-time employees, their salary payments are generally presumed to be made for fair consideration and in the ordinary course of business. MPA at 4:17-27. Accordingly, Defendants contend that Plaintiff must establish that the salaries were made in bad faith or excessive, citing TC Liquidations, 463 B.R. at 268. MPA at 5:3-6. In addition, Defendants contend that the Complaint fails to allege dates and amounts of each individual transfer, and based on other facts alleged, it appears that Debtor was not insolvent on the dates of many of the transfers. MPA at 5:17-22.

The Complaint fails to allege specific facts show that the Debtor paid Manuel and Patricia Rodrigues more than $13,000 gross income per month for their services to the Debtor between December 11, 2016 and December 11, 2018 ("Rodrigues 548(a) Transfers"). The Complaint merely states that Manuel and Patricia Rodrigues took an average monthly salary of $14,063.40 between November 1, 2013 and June 29, 2018. Complaint ¶ 43(b). There are no allegations in the Complaint that the Rodrigues 548(a) Transfers made between December 11, 2016 and June 29, 2018 related to wages paid to Manuel and Patricia Rodrigues exceeded the $13,000 gross income per month permitted in the Debtor's confirmed chapter 11 plan.

Moreover, the Complaint fails to allege specific facts to show that the Rodrigues 548(a) Transfers were made with the intent to hinder, delay or defraud an entity to which the Debtor was or became indebted to on or after the date on which each Rodrigues 548(a) transfer was made.

Finally, the Complaint fails to allege specific facts to show that the Debtor was insolvent or became insolvent because of each of the Rodrigues 548(a) Transfers. While the Complaint alleges that the Debtor was in default of the covenants of the 2014 Loan by September 30, 2016, and unable to repay the 2014 Loan by the maturity date of January 24, 2017 (Complaint ¶ 47), there are no

allegations that specific Rodrigues 548(a) Transfers were made when the Debtor was insolvent or caused the Debtor to become insolvent.

Accordingly, the court grants the Motion with respect to the tenth cause of action with leave to amend.

ELEVENTH CAUSE OF ACTION

The eleventh cause of action asserts avoidance and recovery of fraudulent transfers under 11 U.S.C. § 548(b) against defendant Ryan Schakel.

Defendants contend Ryan Schakel received salary payments and he was a general partner of the Debtor, and in fact the Complaint asserts that the Debtor's assets exceeded its liabilities during the relevant time period by approximately $5 million, so Plaintiff has not stated a claim under 11 U.S.C. § 548(b). MPA at 6:1-11.
A confirmed chapter 11 plan is generally considered to be a contract between the debtor and its creditors. In re Xofox Indus., Ltd., 241 B.R. 541, 543 (Bankr. E.D. -Mich. 1999) (collecting cases and holding a confirmed Chapter 11 plan is a new and binding contract between creditors and the reorganized debtor).

Here, the Complaint alleges that the Debtor breached its chapter 11 plan obligations in July 2018 when the Debtor ceased making plan payments to its general unsecured creditors or sold substantially all of its assets and failed to pay general unsecured creditor claims in full. Complaint ¶¶ 27-28.
Accordingly, the court believes the Complaint adequately sets forth sufficient factual allegations, accepted as true for purposes of the Motion, to state a claim under Bankruptcy Code section 723 against South Lakes Dairy, L.P. and SLD GP, LLC, the Debtor's general partners in July 2018. Accordingly, the Motion will be denied as to the thirteenth cause of action with respect to South Lakes Dairy, L.P. and SLD GP, LLC.
Bankruptcy Code section 548(b) provides that "[t]he trustee of a partnership debtor may avoid a transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation." 11 U.S.C. § 548(b).

The Complaint fails to allege specific facts show that the Debtor was insolvent or became insolvent because of each transfer made to Ryan Schakel between December 11, 2016 and March 15, 2017 ("Ryan Schakel 548(b) Transfers"). While the Complaint alleges that the Debtor was in default of the covenants of the 2014 Loan by September 30, 2016, and unable to repay the 2014 Loan by the maturity date of January 24, 2017 (Complaint ¶ 47), there are no allegations that specific Ryan Schakel 548(b) Transfers were made when the Debtor was insolvent or caused the Debtor to become insolvent. Accordingly, the court grants the Motion with respect to the eleventh cause of action with leave to amend.

TWELFTH CAUSE OF ACTION

The twelfth cause of action asserts avoidance and recovery of fraudulent transfers under 11 U.S.C. § 548(a) against defendant Ryan Schakel.

Defendants contend that the Complaint does not allege actual fraud or that Debtor did not receive reasonably equivalent value for the salary of Ryan Schakel. MPA at 4:13-16. Moreover, because Plaintiff acknowledges that Ryan Schakel was a full-time employee, his salary payments are generally presumed to

be made for fair consideration and in the ordinary course of business. MPA at 4:17-27. Accordingly, Defendants contend that Plaintiff must establish that the salaries were made in bad faith or excessive, citing TC Liquidations, 463 B.R. at 268. MPA at 5:3-6. In addition, Defendants contend that the Complaint fails to allege dates and amounts of each individual transfer, and based on other facts alleged, it appears that Debtor was not insolvent on the dates of many of the transfers. MPA at 5:17-22.

The Complaint fails to allege specific facts show that the Debtor paid Ryan Schakel more than $9,000 gross income per month for his services to the Debtor between December 11, 2016 and December 11, 2018 ("Ryan Schakel 548(a) Transfers"). The Complaint merely states that Ryan Schakel took an average monthly salary of $12,332,07 between November 1, 2013 and June 29, 2018. Complaint ¶ 43(c). There are no allegations in the Complaint that the Ryan Schakel 548(a) Transfers made between December 11, 2016 and June 29, 2018 related to wages paid to Ryan Schakel exceeded the $9,000 gross income per month permitted in the Debtor's confirmed chapter 11 plan.

Moreover, the Complaint fails to allege specific facts to show that the Ryan Schakel 548(a) Transfers were made with the intent to hinder, delay or defraud an entity to which the Debtor was or became indebted to on or after the date on which each Ryan Schakel 548(a) transfer was made.

Finally, the Complaint fails to allege specific facts to show that the Debtor was insolvent or became insolvent because of each of the Ryan Schakel 548(a) Transfers. While the Complaint alleges that the Debtor was in default of the covenants of the 2014 Loan by September 30, 2016, and unable to repay the 2014 Loan by the maturity date of January 24, 2017 (Complaint ¶ 47), there are no allegations that specific Ryan Schakel 548(a) Transfers were made when the Debtor was insolvent or caused the Debtor to become insolvent.

Accordingly, the court grants the Motion with respect to the twelfth cause of action with leave to amend.

THIRTEENTH CAUSE OF ACTION

The thirteenth cause of action seeks determination of liability under 11 U.S.C. § 723 against all Defendants except Landlord.

Defendants contend that the complaint does not state a claim under 11 U.S.C. § 723 because "[u]nder California law, general partners are only personally liable for a partnership's debts only to the extent a creditor has obtained a judgment against those general partners[,]" citing California Corporations Code section 16307. MPA at 6:21-22. Plaintiff asserts that such liability can be determined in bankruptcy court and the default of plan payments under the Debtor's confirmed chapter 11 plan in July 2018 created a payment obligation for which the Debtor's general partners are liable. Opposition at 15:18-27.

Liability under Bankruptcy Code section 723(a) does not require that a partnership creditor hold a judgment against a general partner prior to the filing of the bankruptcy case. Rather, a general partner of a California general partnership can be held liable for unpaid creditor claims to the extent that such creditors can assert a claim against the partnership and include the partner, and such claims are not barred by the statute of limitations. Ehrenberg v. WSCR, Inc. (In re Hoover WSCR Assocs.), 2005 Bankr. LEXIS 3267, *37-38 (B.A.P. 9th Cir. May 31, 2005) ("a trustee's § 723(a) claim is dependent upon a general partner's liability for partnership debts, which further requires that the creditor whose claim remains unpaid either hold or have the

ability to obtain a personal judgment against the general partner" (emphasis in original) (citations omitted)).

A confirmed chapter 11 plan is generally considered to be a contract between the debtor and its creditors. See, e.g., In re Xofox Indus., Ltd., 241 B.R. 541, 543 (Bankr. E.D. Mich. 1999) (citing cases and holding a confirmed chapter 11 plan is a new and binding contract between creditors and the reorganized debtor). Here, the Complaint alleges that the Debtor breached its chapter 11 plan obligations in July 2018 when the Debtor ceased making plan payments to its general unsecured creditors or sold substantially all of its assets and failed to pay general unsecured creditor claims in full. Complaint ¶¶ 27-28. Accordingly, the court believes the Complaint adequately sets forth sufficient factual allegations, accepted as true for purposes of the Motion, to state a claim under Bankruptcy Code section 723 against South Lakes Dairy, L.P. and SLD GP, LLC, the Debtor's general partners in July 2018. Accordingly, the Motion will be denied as to the thirteenth cause of action with respect to South Lakes Dairy, L.P. and SLD GP, LLC.

However, because the Debtor was not in default under its confirmed chapter 11 plan until July 2018, the Complaint fails to allege facts sufficient to identify a creditor or creditors that could assert a claim against the Debtor with respect to the Debtor's former general partners. Accordingly, the Motion will be granted with leave to amend as to defendants the Trust, Fred Schakel, Audrey Schakel, Ryan Schakel, Kristin Schakel, Patricia Rodrigues and Manuel Rodrigues with respect to the thirteenth cause of action.

FOURTEENTH CAUSE OF ACTION

The fourteenth cause of action seeks declaratory relief that defendants Fred Schakel, Audrey Schakel, Ryan Schakel, Kristin Schakel, Patricia Rodrigues and Manuel Rodrigues are alter egos of SLD GP, LLC.

Defendants contend that Plaintiff "has not alleged any facts showing that an alter ego relationship exists between SLD, GP, LLC and its members." MPA at 11:25-26.

California Corporations Code section 17703.04 provides:

> A member of a limited liability company shall be subject to liability under the common law governing alter ego liability, and shall also be personally liable under a judgment of a court or for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, under the same or similar circumstances and to the same extent as a shareholder of a corporation may be personally liable for any debt, obligation, or liability of the corporation; except that failure to hold meetings of members or managers of the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that a member or the members have alter ego or personal liability for any debt, obligation, or liability of the limited liability company where the articles of organization or operating agreement do not expressly require the holding of meetings of members or managers.

"In California, an alter ego relationship exists if '(1) [there is] such unity of interest and ownership that separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow.'" Turner v. Kendall (in re Turner), 2007 Bankr. LEXIS 4834, *16-17 (B.A.P. 9th Cir. Sept.

18, 2007) (quoting Mesler v. Bragg Mgmt. Co., 39 Cal. 3d 290 (1985)). The court believes the Complaint adequately sets forth sufficient factual allegations, accepted as true for purposes of the Motion, to state a claim for alter ego, and the Motion is denied as to this cause of action.

3. 19-13783-A-7 **IN RE: MARK/SUSAN CHAGOYA**
19-1129

STATUS CONFERENCE RE: AMENDED COMPLAINT
7-6-2020 [40]

BROWN V. CHAGOYA ET AL
JEFF BEAN/ATTY. FOR PL.

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

DISPOSITION: Continued to September 10, 2020, at 11:00 a.m.

NO ORDER REQUIRED.

The status conference will be continued to September 10, 2020 at 11:00 a.m., to be heard with the motion to dismiss this adversary proceeding.

1. 20-11509-A-7 **IN RE: JUAN GONZALEZ RAMIREZ AND ANA RAMIREZ**

PRO SE REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.
6-25-2020 [14]

REBECCA TOMILOWITZ/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' counsel will inform debtor that no appearance is necessary.

The court is denying approval of the reaffirmation agreement. Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. In re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Okla. 2009). The reaffirmation agreement, in the absence of a declaration by debtor(s)' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. In addition, the reaffirmation appears to relate to a debt which was co-signed by the debtors.

2. 20-11509-A-7 **IN RE: JUAN GONZALEZ RAMIREZ AND ANA RAMIREZ**

REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.
6-25-2020 [16]

REBECCA TOMILOWITZ/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

No hearing or order is required. The form of the Reaffirmation Agreement complies with 11 U.S.C. §524(c) and 524(k), and it was signed by the debtors' attorney with the appropriate attestations. Pursuant to 11 U.S.C. §524(d), the court need not approve the agreement.

3. 20-11509-A-7 **IN RE: JUAN GONZALEZ RAMIREZ AND ANA RAMIREZ**

PRO SE REAFFIRMATION AGREEMENT WITH FORD MOTOR CREDIT COMPANY LLC
7-6-2020 [22]

REBECCA TOMILOWITZ/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' counsel will inform debtor that no appearance is necessary.

The court is denying approval of the reaffirmation agreement. Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. In re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Okla. 2009). The reaffirmation agreement, in the absence of a declaration by debtor(s)' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. In addition, the reaffirmation appears to relate to a debt which was co-signed by the debtors.

1. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**

RESCHEDULED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
1-2-2020 [1]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
LKW-11

MOTION TO SELL FREE AND CLEAR OF LIENS
7-8-2020 [157]

EDUARDO GARCIA/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

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

This motion was 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). 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. Because the court has concerns about the proposed distribution of sale proceeds, this matter will proceed as scheduled.

Eduardo Zavala Garcia and Amalia Perez Garcia ("DIP"), the debtors in possession in this Chapter 11 case, move pursuant to 11 U.S.C. §§ 363(b) and (f) for the court's approval to sell to Grimmway Farms or its nominee (the "Buyer") 77.04 acres of real property located in Kern County, California known as the Portillo Ranch, APN 179-110-32-00-8 ("Portillo Ranch") for the purchase price of $1,100,000.00 in cash, free and clear of liens. Doc. #157.

DIP's Schedule D lists the following secured creditors and their respective claims secured by the Portillo Ranch:

//

Creditor	Lien	Amount of Claim
Kern County Treasurer and Tax Collector	Tax Lien	$24,802.97
Megan Sill Phillips	Deed of Trust	$465,260.77
Maxco Supply, Inc.	Deed of Trust	$266,490.44
Helena Chemical Company	Abstract of Judgment	$241,177.07
		(Total = $997,731.25)

Doc. #161, Garcia Decl. at ¶ 5; Doc. #26, Sched. D.

Pursuant to 11 U.S.C. § 363(f)(2) and (4) and § 1107(a), a Chapter 11 debtor in possession may sell property of the estate outside the ordinary course of business, after notice and a hearing, "free and clear of any interest in such property of an entity other than the estate," only if "such entity consents" or "such interest is in bona fide dispute." Notice was proper and no opposition has been filed. The absence of objection to a properly noticed motion to sell free and clear of interests constitutes consent to such free and clear sale. See FutureSource LLC v. Reuters Ltd., 312 F.3d 281, 285 (7th Cir. 2002) (stating, in the context of section 363(f)(2), "lack of objection (provided of course there is notice) counts as consent"). Therefore, the court may authorize the sale of the Portillo Ranch free and clear of the interests of any nonobjecting party who received notice of this motion.

To the extent any other party in interest asserts a claim that might be an interest in the Portillo Ranch, such interest would be subject to a bona fide dispute pursuant to 11 U.S.C. § 363(f)(4). See In re Dow Corning Corp., 198 B.R. 214, 245 (Bankr. E.D. Mich. 1996) (where "the Debtor vehemently denies liability to the tort claimants, it is easy to conclude that the interest, if any, of a tort claimant in any of the Debtor's insurance policies 'is in bona fide dispute'"). "In ruling on a motion to sell estate property free and clear under § 363(f)(4), 'a court need not determine the probable outcome of the dispute, but merely whether one exists.'" In re Kellogg-Taxe, Case No. 2:12-bk-51208-RN, 2014 Bankr. LEXIS 1033, at *22-23 (Bankr. C.D. Cal. Mar. 17, 2014) (citing In re Octagon Roofing, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991)). The parties must establish factual grounds to show an objective basis for the dispute. Id. (citing In re Gaylord Grain L.L.C., 306 B.R. 624, 627 (B.A.P. 8th Cir. 2004)). "The purpose of § 363(f)(4) is to permit property of the estate to be sold free and clear of interests that are disputed by the representative of the estate so that liquidation of the estate's assets need not be delayed while such disputes are being litigated." Moldo v. Clark (In re Clark), 266 B.R. 163, 171 (B.A.P. 9th Cir. 2001). The proceeds of the sale are typically held subject to the disputed interest, then distributed following the resolution of the dispute pursuant to the court's order and judgment. Id. This preserves all parties' rights by transferring interests from property to the proceeds that represent its value. Id.

A debtor in possession may sell assets not necessary to the reorganization. See In re Brileya, 108 B.R. 444, 446 (Bankr. D. Vt. 1989) (allowing a Chapter 12 debtor to sell assets not necessary to the reorganization without the secured creditor's consent where liens attach to the proceeds). The court "has considerable discretion in deciding whether to approve or disapprove the use of estate property by a debtor in possession, in the light of sound business justification." Walter v. Sunwest Bank (In re Walter), 83 B.R. 14, 17 (B.A.P. 9th Cir. 1988) (citations omitted). However, "[i]n approving any sale outside the ordinary course of business, the court must not only articulate a sufficient business reason for the sale, it must further find it is in the best interest of the estate, i.e. it is fair and reasonable, that it has been given adequate marketing, that it has been negotiated and proposed in good faith, that the purchaser is proceeding in good faith, and that it is an 'arms-length'

transaction.” In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991) (requiring close scrutiny of a sale of substantially all of debtor’s property outside the ordinary course of business, and without a Chapter 11 disclosure statement and plan).

The court finds that DIP have articulated sound business justification to sell the Portillo Ranch, the terms offer a fair and reasonable price, and the sale is proposed in good faith. DIP have determined that the Portillo Ranch is not necessary to their reorganization and have decided to sell the Portillo Ranch and use the proceeds from the sale to pay secured claims, costs of sale, administrative claims in this case, and provide operating capital to DIP for use in their business. Doc. #161, Garcia Decl. at ¶ 2. The Portillo Ranch represents 77.04 acres, or less than 5%, of the 1,551.29 acres of farmland and grazing land that DIP own in Kern County. Id. at ¶ 3. The Buyer has offered to purchase the Portillo Ranch for $1,100,000.00 in cash, which is more than the $616,320.00 DIP believed the Portillo Ranch was worth when they filed this case and scheduled this asset. Id. DIP’s real estate broker offers testimony that the Buyer is “a large and respected agricultural business and a strong and credible buyer.” Doc. #160, Anchordoquy Decl., at ¶ 5. DIP state that they have no connection with the Buyer other than the Buyer’s offer to purchase the Portillo Ranch. Doc. #161, Garcia Decl., at ¶ 6.

DIP believe that selling the Portillo Ranch to the Buyer and their intended use of the proceeds from the sale is in the best interest of the estate. Doc. #161, Garcia Decl., at ¶ 2. However, the court has some concern how DIP intend to distribute the sale proceeds, and DIP should be prepared to address the following issues at hearing.

DIP seek authority from the court to use the proceeds of sale to pay parties in the following priority:

	Sale Proceeds		**$1,100,000.00**
1.	Kern County Treasurer and Tax Collector	-	$24,802.97
2.	Megan Sill Phillips	-	$465,260.77
3.	Maxco Supply, Inc.	-	$266,490.44
4.	Real Estate Commission (4%)	-	$44,000.00
5.	DIP’s Cost of Sale, Including Escrow, Closing Costs, and Title Insurance	-	$33,000.00
6.	“Debtors’ attorney for fees and costs authorized for payment by Bankruptcy Court”	-	$20,000.00
7.	“Debtors accountant for fees and costs authorized for payment by Bankruptcy Court”	-	$15,000.00
8.	DIPs, for payment of business expenses in Chapter 11	-	$50,000.00
9.	Net proceeds to Helena Chemical Company	-	$181,445.82
		=	$0.00

“Generally, bankruptcy administrative expenses may not be charged to or against secured collateral.” United States Dep’t of Agric. v. Hopper (In re Colusa Reg’l Med. Ctr.), 604 B.R. 839 (B.A.P. 9th Cir. 2019). The proposed “waterfall” places administrative claims ahead of the secured claim of Helena Chemical Company (“Helena Chemical”) without its affirmative consent. DIP provide no discussion about the legal basis for this order of distribution from the sale of estate property that secures Helena Chemical’s judicial lien. The total encumbrances on the Portillo Ranch, including Helena Chemical’s judicial lien, equal $997,731.25. Deducting the real estate broker’s commission of $44,000.00, which the court ordered may be paid from the sale proceeds out of escrow without further order of the court (Doc. #118), and cost of sale of $33,000.00,

leaves remaining net proceeds of $25,268.75. The sale of Portillo Ranch for $1,100,000.00 would result in sufficient proceeds to pay secured creditors Kern County Treasurer and Tax Collector, Megan Sill Phillips, Maxco Supply, Inc., and Helena Chemical in full, with net proceeds of $25,268.75 for the estate.

Accordingly, the court is inclined to grant DIP's motion to sell the Portillo Ranch free and clear of liens to the Buyer for the purchase price of $1,100,000.00. However, the court will not authorize the payment and distribution of the sale proceeds for Chapter 11 administrative expenses before Helena Chemical's secured claim is satisfied in full without the affirmative consent of Helena Chemical.

3. 20-11367-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
LKW-5

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
7-15-2020 [84]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

In this Chapter 11 case, Leonard K. Welsh ("Counsel"), counsel for the debtor in possession Temblor Petroleum Company, LLC ("DIP"), has applied for an allowance of interim compensation and reimbursement of expenses. Doc. #84. Pursuant to the court's order authorizing the employment of Counsel, Counsel may submit monthly applications for interim compensation under 11 U.S.C. § 331. Doc. #21. The applicant requests that the court allow compensation in the amount of $3,857.50 and reimbursement of expenses in the amount of $177.70, totaling $4,035.20, for services rendered from June 1, 2020 through June 30, 2020. Id.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant

factors. See id. § 330(a)(3). The services rendered for the relevant time period of this application include, without limitation, advising DIP about various issues arising in Chapter 11; preparing and filing amended schedules; assisting DIP in preparing and filing the monthly operating report; preparing and participating in the Chapter 11 status conference; and handling claims and litigation involving the California Energy Exchange. Doc. ##84, 87, 88. The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis.

Accordingly, the motion is GRANTED on an interim basis. The court allows interim compensation in the amount of $3,857.50 and reimbursement of expenses in the amount of $177.70. Counsel is authorized to draw on any retainer held. Counsel is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.