

**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Wednesday, September 7, 2022
Department B - 510 19th Street
Bakersfield, California**



At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be as instructed below.

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) via **ZOOMGOV VIDEO**, (2) via **ZOOMGOV TELEPHONE**, and (3) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

Prior to the hearing, parties appearing via Zoom or CourtCall are encouraged to review the court's [Zoom Policies and Procedures](#) or [CourtCall Appearance Information](#).

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided:

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Please join at least 5 minutes before the start of your hearing and wait with your microphone muted and camera on until your matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screenshots" or other audio or visual copying of a hearing, is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

Post-Publication Changes: The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:00 AM

1. [21-10537](#)-B-13 **IN RE: MAGDALINO DIMPAS**
[RSW-1](#)

CONTINUED MOTION TO MODIFY PLAN
6-14-2022 [[38](#)]

MAGDALINO DIMPAS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order approved as to form by Trustee.

This motion was initially heard on August 3, 2022 and continued to September 7, 2022. Docs. ##48-49.

Magdalino Mata Dimpas ("Debtor") moved for an order confirming the *First Modified Chapter 13 Plan* dated June 14, 2022. Doc. #38. The proposed 60-month plan provides that Debtor shall pay a total of \$17,800.00 through June 2022, and beginning July 2022, Debtor shall pay \$1,500.00/month through the end of the plan. Doc. #42. Debtor's *Amended Schedules I and J* indicate that Debtor's monthly net income is \$1,502.36/month. Doc. #44.

In contrast to the operative *Chapter 13 Plan* dated March 4, 2021, confirmed July 19, 2021, the plan payment has increased from \$1,450.00/month for the first two months and \$1,490.00/month starting month 3, to \$1,500.00/month for the remainder of the plan. Docs. #4; #29. Both plans provide for a 100% dividend to allowed, non-priority unsecured claims.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #46. Trustee said that the increased plan payment over the remaining 45 months will take 52.45 months to fund, so Debtor would need to increase the payment to at least \$1,557.00/month to fund during this time period. *Id.*

The court continued the hearing to September 7, 2022. Doc. #49. Debtor was required to file and serve a written response not later than

August 24, 2022 and Trustee was required to file and serve a reply, if any, not later than August 31, 2022. Doc. #48.

On August 21, 2022, Debtor filed and served a written response agreeing to increase the plan payment to \$1,557.00. Doc. #52.

Trustee did not reply. But as noted above, the amended schedules indicate that Debtor's monthly net income is \$1,502.36/month. Doc. #44. This would create monthly deficit of \$54.64. Debtor claims a new budget will be submitted supporting the increase. Doc. #52. As of September 1, 2022, that has not been submitted.

This matter will be called and proceed as scheduled to inquire whether the plan is feasible and whether Trustee's objection can be resolved in the order confirming plan. If granted, the confirmation order shall include the docket control number of the motion, reference the plan by the date it was filed, and be approved as to form by Trustee.

2. [22-10954](#)-B-13 **IN RE: CHAD GILLIES**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
7-18-2022 [[13](#)]

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Resolved by stipulation.

ORDER: The Objecting Party shall submit a proposed order in conformance with the ruling below. Objection removed from calendar.

This objection was initially heard on August 3, 2022 and continued to September 7, 2022. Docs. ##18-19.

Chapter 13 trustee Michael H. Meyer ("Trustee") objected to confirmation of Chad Mitchell Gillies' ("Debtor") *Chapter 13 Plan* dated June 2, 2022. Doc. #13. Trustee objected because: (1) the plan provides for payments to creditors for a period longer than 5 years (11 U.S.C. § 1322(d)); and (2) the plan fails to comply with other provisions of the Bankruptcy Code (11 U.S.C. § 1325(a)(1)).

The court continued the hearing to September 7, 2022. Doc. #19. Debtor was required to file and serve a written response not later than August 24, 2022 and Trustee was required to file and serve a reply, if any, not later than August 31, 2022. Doc. #18.

Since the last hearing, the parties jointly stipulated to resolve Trustee's objections. Doc. #24. The parties also filed a proposed order confirming the plan, which was approved as to form by Trustee. Doc. #25, Ex. A.

Accordingly, Trustee's objection has been RESOLVED BY STIPULATION and will be taken off calendar.

3. [22-10957](#)-B-13 **IN RE: BRYAN URNER AND JULIE VANDERNOOR URNER**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
7-18-2022 [[12](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This objection was initially heard on August 3, 2022 and continued to September 7, 2022. Docs. ##15-16.

Trustee's Objection

Chapter 13 trustee Michael H. Meyer ("Trustee") objected to confirmation of Bryan Edward Urner's and Julie Michelle Vandernoor Urner's ("Debtors") *Chapter 13 Plan* dated June 5, 2022. Doc. #12. Trustee objected because: (1) the plan fails to provide for the same treatment of claims classified within a particular class (11 U.S.C. § 1322(a)) and unfairly discriminates between a class or classes of unsecured claims (11 U.S.C. § 1322(b)); (2) the plan fails to provide for the value of property to be distributed under the plan on account of each allowed unsecured claim in at least the amount that would be paid if the estate was liquidated under chapter 7 (11 U.S.C. § 1325(a)(4)); and (3) the plan has not been proposed in good faith (11 U.S.C. § 1325(a)(3)) and/or the petition was filed in bad faith (11 U.S.C. § 1325(a)(7)). *Id.*

The plan provides for payments of \$7,500.00/month for 60 months. Doc. #3. From these payments, Trustee is to pay \$2,400.00 in attorney fees, \$27,611.30 of arrearages on Debtors' real property, post-petition monthly payments of \$1,978.00 on Debtors' residence, and two Class 2 creditors for Debtors' automobiles in the amounts of \$1,575.00 and \$3,165.00/month with 5% interest. *Id.* Additionally, Debtors have approximately \$355,222.07 in unsecured, non-priority claims. This consists of \$210,873.00 in student loan debt for Debtors' daughter, for which Debtors claim to be liable and will pay directly outside of the plan as a long-term debt. The other unsecured debt is non-student loan debt that totals \$163,840.05 and will be paid 100% by the trustee.

Debtors' *Schedule J* indicates that Debtors have \$11,100.00 in monthly net income. Doc. #1, *Sched. J*. From that, Debtors will be paying \$7,500.00/month for the plan payment and have \$3,600.00/month available to pay the student loan debt. Debtors testified at the 341 meeting that the student loan payment is approximately \$2,000.00/month. Doc. #12. However, Debtors' counsel indicated that after the student loan forbearance ends, no payments will be required on the student loans because of the bankruptcy.

First, Trustee objected because payment of the student loan without payment to other unsecured creditors fails the unfair discrimination test in *Amfac Distrib. Corp. v. Wolff (In re Wolff)*, 22 B.R. 510 (B.A.P. 9th Cir. 1982). *Id.* Payment of 100% of the non-student loan debt while not paying the student loan debt is unfair discrimination. The Bankruptcy Code requires similarly situated creditors to be similarly treated unless cause is found to allow discrimination between classes.

Second, Trustee contended that the plan fails the liquidation analysis under § 1325(a)(4). If this case were liquidated under chapter 7 on the date of confirmation, Debtors have non-exempt assets in excess of \$500,000.00. Doc. #12. Unsecured and priority creditors, including the student loan claims, do not exceed \$500,000.00, so Trustee says that the claims must be paid with interest at the Federal Judgment Rate.

Lastly, Trustee raised that the plan had not been proposed in good faith, and/or the petition was filed in bad faith because the plan proposes language to pay student loans directly, yet Debtors testified that no payments are intended to be made because of the bankruptcy.

The court continued the hearing to September 7, 2022. Doc. #16. Debtor was required to file and serve a written response not later than August 24, 2022 and Trustee was required to file and serve a reply, if any, not later than August 31, 2022. Doc. #15.

Debtors' Response

On August 24, 2022, Debtors timely responded. Doc. #18. Debtors have no objection to paying as much as they can each month on their student loans, but Debtors are unsure how much they can afford to pay because their financial situation changed this year. Doc. #19. Joint debtor Julie Urner closed her law office and took a salaried position and Bryan Urner is paid from an LLC from which no taxes are taken. *Id.* Based on their 2021 returns, Debtors have estimated that they need to set aside \$2,000 per month for payment of taxes on Mr. Urner's income. *Id.* Although Debtors do not intend to make any student loan payments presently, they intend to do so as soon as they determine how much they can afford. Debtors also note that their student loans are in forbearance until January 1, 2023. Though hearsay, Debtors claim to have been informed that they have no obligation to pay their loans while in bankruptcy. *Id.*

Debtors claim that if they are forced to pay all they can afford to pay each month, they may not have enough money saved up to pay their 2022 taxes when they become due in April 2023, which would jeopardize their case. Doc. #18. Further, payment of all they can afford towards the long-term student loan debt could decrease the remaining dividend to allowed unsecured claims.

Lastly, Debtors argue that the plan was filed in good faith as a "typical 100% with long term student loan debt" and that public policy favors reasonable discrimination because the debt is nondischargeable and continuing to accrue interest. Doc. #18. Debtors do not anticipate paying off the long-term student loan debt through the plan and it will survive the bankruptcy. Therefore, Debtors ask for the objection to be overruled and their plan to be confirmed. *Id.*

Trustee did not reply.

This matter will be called and proceed as scheduled.

4. [21-12176](#)-B-13 **IN RE: JAIME/MIREYA MURILLO**
[RSW-5](#)

MOTION TO CONFIRM PLAN
7-26-2022 [[56](#)]

MIREYA MURILLO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order approved as to form by Trustee.

Jaime Aceves Murillo and Mireya Ileana Murillo (collectively, "Debtors") seek an order confirming the *First Modified Chapter 13 Plan* dated July 26, 2022. Doc. #56. The proposed plan provides that Debtors shall pay \$2,400.00 per month through June 2022, and beginning July 2022, the payment shall increase to \$2,721.00 per month. Doc. #60. The proposed plan provides for a 73% dividend to allowed, unsecured claims.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the plan under 11 U.S.C. § 1325(a)(6) because the debtors will not be able to make all payments under the plan. Doc. #62. Debtors replied. Doc. #66.

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 failure of the creditors, the U.S. Trustee, or any other party in interest except Trustee to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Trustee are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Trustee says that Debtors' *Schedules I* and *J* were last filed with the petition on September 11, 2021, so it cannot be determined whether the plan is feasible without updated schedules. Additionally, the proposed plan calls for payments to increase to \$2,721.00 beginning July 2022, but on July 25, 2022, Debtors made a \$2,400.00 payment rather than the increased amount. Therefore, Debtors are delinquent \$321.00 under the proposed plan through July 2022, with an additional payment due in August. *Id.*

Debtors filed *Amended Schedules I* and *J* on August 12, 2022. The new schedules indicate that Debtors earn \$2,725.88 per month, which is sufficient to afford the increased plan payment beginning July 2022. Doc. #64. Debtors also paid the \$2,721.00 August plan payment on August 25, 2022, and the \$321.00 delinquency on August 29, 2022. Doc. #66.

It appears that Debtors have resolved Trustee's objection. This matter will be called as scheduled to inquire whether Trustee has received the above payments and whether Debtors have cured the delinquency. If so, the court intends to GRANT the motion. The confirmation order shall include the docket control number of the motion, reference the plan by the date it was filed, and be approved as to form by Trustee.

5. [18-10681](#)-B-13 **IN RE: RICHARD/MARIA LAUREYS**
[RSW-2](#)

MOTION TO MODIFY PLAN
7-14-2022 [[97](#)]

MARIA LAUREYS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
WILLIAM OLCOTT/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Richard Francis Laureys and Maria Alexandra Laureys (collectively "Debtors") seek an order confirming the *Fifth Modified Chapter 13 Plan* dated July 14, 2022. Doc. #97. The plan proposes that Debtors shall pay a total of \$40,996.86 in plan payments through June 2022, and beginning July 2022, the plan payment shall be \$615.00 per month. Doc. #101. The plan also provides for a total payment of \$1,475.16 to class 4 creditors and a 0% dividend to allowed, non-priority unsecured claims. Debtors' *Amended Schedules I and J* dated July 21, 2022 indicate that Debtors receive \$4,085.00 in monthly net income. Doc. #105.

In contrast to the operative *Third Modified Chapter 13 Plan* dated August 20, 2018, the payment is decreasing from \$844.00 per month but still maintaining a 0% dividend to allowed, non-priority unsecured claims. No party in interest timely filed written opposition.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion will be 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.

10:00 AM

1. [22-11024](#)-B-7 IN RE: DAVID/EVANGELINA HEREDIA
[JMV-2](#)

MOTION TO SELL
8-8-2022 [[21](#)]

JEFFREY VETTER/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") requests an order authorizing the sale of the estate's interest in (i) a 2004 Freightliner, (ii) a 1999 Utility Trailer, (iii) a 1998 Chaparral 48' Flat Trailer, and (iv) a 2020 Timpte 43' Grain Trailer (collectively "Estate Assets") at public auction under 11 U.S.C. § 363(b)(1). Doc. #21. The auction will be held by Gould Auction & Appraisal Company ("Auctioneer") at 6100 Price Way, Bakersfield, CA 93308 on September 24, 2022 at 9:00 a.m. Trustee also seeks authorization to compensate Auctioneer under 11 U.S.C. §§ 327(a), 328, and 330, and requests waiver of the 14-day stay under Fed. R. Bankr. P. ("Rule") 6004(h). *Id.*

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(2) and (a)(6). The failure of the creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion affects the proposed disposition and the Auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by movant here as to the proposed auctioneer and use the court's discretion to add a party under Civ. Rule 21.

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

David Heredia and Evangelina Heredia (collectively "Debtors") filed chapter 7 bankruptcy on June 21, 2022. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first § 341 meeting of creditors on July 22, 2022. Doc. #5; docket generally. In the course of administering the estate, Trustee investigated the estate's assets, which included a large number of vehicles to be surrendered from Debtors' trucking business. See Doc. #1, *Sched. A/B, Attach. B*. Among those vehicles are the Estate Assets.

Compensation of Auctioneer

On August 8, 2022, Trustee moved to employ Auctioneer to assist the trustee in carrying out the trustee's duties by selling property of the estate. Doc. #17. The court authorized Auctioneer's employment on August 16, 2022 under 11 U.S.C. § 327. Doc. #26. Pursuant to 11 U.S.C. § 328(a), the court set Auctioneer's commission to 15% of the gross proceeds of the sale of property and authorized Auctioneer to charge a 10% buyer's premium to be paid by the buyer. The order also noted that Auctioneer will use the online service Proxibid, which will require buyers using Proxibid to pay an addition 3% fee for its service.

Lastly, the employment order authorized Trustee to pay Auctioneer \$2,500.00 in reimbursement of expenses for picking up and storing the property to be sold, and up to \$1,500.00 for reimbursement of any extraordinary expenses, such as repair or detail work deemed by the Trustee to be necessary and beneficial to the estate. *Id.*

Pursuant to the employment order, Trustee requests to compensate Auctioneer from the proceeds of this sale by paying: (a) a 15% commission on the gross proceeds from the sale; (b) \$2,500.00 in reimbursement for pickup and storage expenses; and (c) up to \$1,500.00 for any extraordinary expenses, such as repair work, deemed by the Trustee to be necessary and beneficial to the estate.

Trustee declares that Auctioneer's commission and fees will be noticed to creditors and parties in interest, who will be afforded an opportunity to object to the compensation in the context of the sale motion. Auctioneer will be paid by Trustee within ten days of receipt of the funds from the sale.

The court will authorize Trustee to pay Auctioneer's compensation as prayed.

Proposed Sale

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

Trustee wishes to sell the Estate Assets at public auction under § 363(b)(1). Doc. #21. The Estate Assets have a total scheduled value of \$63,000.00 with no secured creditors or exemptions. If sold at the scheduled values, the proposed sale would be illustrated as follows:

Asset	A/B Value
2004 Freightliner	\$5,000
1999 Utility Trailer	+ \$10,000
Chaparral 48' Flat Trailer	+ \$8,000
2020 Timppte 43' Grain Trailer	+ \$40,000
Gross Total	= \$63,000
Auctioneer Compensation (15%)	- \$9,450
Pickup/Storage Expenses	- \$2,500
Extraordinary Expenses (≤)	- \$1,500
Net to Estate	≥ \$49,550

Id. The Estate Assets do not appear to be encumbered by any security interests or exempted, so after payment of Auctioneer's compensation,

\$49,550.00 will remain in net proceeds for the benefit of the estate. *Id.*, Scheds. C, D.

Trustee claims that using the auction process to sell the Estate Assets will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #21.

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

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized to sell the Estate Assets at public auction on or after September 24, 2022 and pay Auctioneer for its services. Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of the gross proceeds from the sale and payment of \$2,500.00 for pickup and storage fees and up to \$1,500 for extraordinary expenses deemed by Trustee to be necessary and beneficial to the estate.

Rule 6004(h)

Trustee's request for waiver of the 14-day stay of Rule 6004(h) will be DENIED because Trustee presents no legal or factual bases in support of such waiver. See *Paladino v. S. Coast Oil Corp.* (*In re S. Coast Oil Corp.*), 566 F. App'x 594, 595 (9th Cir. 2014) (affirming waiver of 14-day stay because time was of the essence due to regulatory deadlines); *In re Ormet Corp.*, 2014 LEXIS 3071 (Bankr. D. Del. July 17, 2014) (finding cause to lift 14-day stay because the buyer required closing before the stay would expire). Trustee says that the auction will occur on September 24, 2022, which is more than 14 days after the hearing on this motion. Therefore, there do not appear to be any circumstances warranting waiver of the stay under Rule 6004(h).

2. [22-10936](#)-B-7 **IN RE: PEGGY RIOS**
[JMV-2](#)

MOTION TO SELL
8-8-2022 [[20](#)]

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

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

DISPOSITION: Granted.

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

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") requests an order authorizing the sale of the estate's interest in a 2014 Toyota Tacoma with approximately 75,000 miles ("Estate Asset") at public auction under 11 U.S.C. § 363(b)(1). Doc. #20. The auction will be held by Gould Auction & Appraisal Company ("Auctioneer") at 6100 Price Way, Bakersfield, CA 93308 on September 24, 2022 at 9:00 a.m. Trustee also seeks authorization to compensate Auctioneer under 11 U.S.C. §§ 327(a), 328, and 330 and requests waiver of the 14-day stay under Fed. R. Bankr. P. ("Rule") 6004(h). *Id.*

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(2) and (a)(6). The failure of the creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion affects the proposed disposition and the Auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by movant here as to the proposed auctioneer and use the court's discretion to add a party under Civ. Rule 21.

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

Peggy Crespín Rios ("Debtor") filed chapter 7 bankruptcy on May 31, 2022. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first § 341 meeting of creditors on June 24, 2022. Doc. #5; docket generally. In the course of administering the estate, Trustee investigated the estate's assets, which included the Estate Asset. See Doc. #1, *Sched. A/B*.

Compensation of Auctioneer

On August 8, 2022, Trustee moved to employ Auctioneer to assist the trustee in carrying out the trustee's duties by selling property of the estate. Doc. #15. The court authorized Auctioneer's employment on August 16, 2022 under 11 U.S.C. § 327. Doc. #25. Pursuant to 11 U.S.C. § 328(a), the court set Auctioneer's commission to 15% of the gross proceeds of the sale of property and authorized Auctioneer to charge a 10% buyer's premium to be paid by the buyer. The order also noted that Auctioneer will use the online service Proxibid, which will require buyers using Proxibid to pay an additional 3% fee for its service.

Lastly, the employment order authorized Trustee to pay Auctioneer \$100.00 in reimbursement of expenses for picking up and storing the property to be sold, and up to \$150.00 for reimbursement of any extraordinary expenses, such as repair or detail work deemed by the Trustee to be necessary and beneficial to the estate. *Id.*

Pursuant to the employment order, Trustee requests to compensate Auctioneer from the proceeds of this sale by paying: (a) a 15% commission on the gross proceeds from the sale; (b) \$100.00 in reimbursement for pickup and storage expenses; and (c) up to \$150.00 for any extraordinary expenses, such as repair work, deemed by the Trustee to be necessary and beneficial to the estate.

Trustee declares that Auctioneer's commission and fees will be noticed to creditors and parties in interest, who will be afforded an opportunity to object to the compensation in the context of the sale motion. Auctioneer will be paid by Trustee within ten days of receipt of the funds from the sale.

The court will authorize Trustee to pay Auctioneer's compensation as prayed.

Proposed Sale

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

Trustee wishes to sell the Estate Asset at public auction under § 363(b)(1). Doc. #20. The Estate Asset is listed in the schedules with a value of \$10,118.00 and Debtor has claimed a \$3,625.00 exemption in the vehicle under Cal. Code Civ. Proc. § 704.010. Doc. #1. If sold at the scheduled values, the proposed sale would be illustrated as follows:

Asset	A/B Value
2014 Toyota Tacoma	\$10,118.00
Auctioneer Compensation (15%)	- \$1,517.70
Pickup/Storage Expenses	- \$100.00
Extraordinary Expenses (≤)	- \$150.00
Debtor's Exemption	- \$3,625.00
Net to Estate	≥ \$4,725.30

Id. After payment of Debtor's exemption and Auctioneer compensation, \$4,725.30 or more in net proceeds will remain for the benefit of the estate. *Id.*

Trustee claims that using the auction process to sell the Estate Assets will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #20.

Sale by auction under these circumstances should maximize potential recovery for the estate. The sale of the Estate Asset appears to be in the best interests of the estate because it will provide liquidity that can be distributed for the benefit of unsecured claims. The sale

appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized to sell the Estate Asset at public auction on or after September 24, 2022 and pay Auctioneer for its services. Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of the gross proceeds from the sale and payment of \$100.00 for pickup and storage fees and up to \$150.00 for extraordinary expenses deemed by Trustee to be necessary and beneficial to the estate.

3. [22-10569](#)-B-7 **IN RE: SUMAIRA RAHMAN**
[JCW-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-29-2022 [[85](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

MTGLQ Investors, LP, by and through its' servicing agent, Rushmore Loan Management Services, LLC (collectively, "Movant" unless otherwise indicated), asks the court to terminate the automatic stay of 11 U.S.C. § 362(a) to permit the completion of a non-judicial foreclosure of its interest in the debtor's property at 12104 Timberlake Dr. In Bakersfield, CA ("Property") pursuant to § 362(d)(1) and (d)(2). Doc. #85. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3), an award of attorneys' fees and costs, and to allow Movant to contact the Debtor to comply with Cal. Civ. Code § 2923.5. *Id.*

Sumaira Rahman ("Debtor"), who is *pro se*, opposes the motion. Doc. #114.

This matter will be called and proceed as scheduled because Debtor is not represented by counsel. The court intends to GRANT the motion.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party

in interest except Debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtor are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Movant's predecessor, Chevy Chase Bank F.S.B., lent Debtor \$379,000.00 secured by a deed of trust encumbering Property in 2006. Doc. #88. About a year later, an employee of Chevy Chase Bank signed an Affidavit of Lost Note evidencing the loan to Debtor. *Id.* Four years after that, Chevy Chase Bank assigned the loan to Capital One. *Id.*

While Capital One owned the loan, Debtor signed a "Mortgage Loan Modification Agreement" in December 2015. *Id.* In that agreement Debtor acknowledged (i) an existing default, (ii) that she had not made all the payments, (iii) she was experiencing financial hardship, (iv) the principal balance then owed was \$487,000.00, (v) the loan documents were all valid, (v) that MERS, as Capital One's nominee, had authority to enforce the security, and (vi) made other acknowledgments and agreements. *Id.* at page 40 and 41.

In 2018, Capital One assigned the loan to MTGLQ Investors, L.P., the current purported owner.

Movant here claims "cause" exists for stay relief under § 362(d)(1) because the loan has been delinquent since 2016 and delinquencies amount to over \$133,000. Doc. #87. These delinquencies consist of 76 missed pre-petition payments and 3 missed post-petition payments.

Movant also claims relief should be granted under § 362(d)(2) because using the debtor's own valuation of Property there is no equity. *Id.* Debtor claims the property value is \$539,000.00. Doc. #85. Movant claims the total liens against the property are \$642,000, so the debtor has negative equity of over \$103,000.00. *Id.*

Debtor's opposition is her declaration which contains a laundry list of arguments but few facts to support opposition to stay relief. Doc. #114. Debtor claims Movant lacks standing as a secured creditor to proceed with this motion because the actual note is lost. *Id.* Pre-petition, Debtor apparently filed an action in the Kern County Superior Court in which Movant's standing is contested. *Id.*

Debtor filed a Notice of Pendency of Action pre-petition. *Id.* Debtor has made other claims in that action. Debtor claims the "Homeowner's Bill of Rights" have been violated because Movant has proceeded with foreclosure though Debtor has attempted further loan modification. *Id.* Debtor also claims Real Estate Settlement Procedures Act ("RESPA")

violations have occurred because Movant has compounded illegal fees on the balance. *Id.* Debtor wants an accounting of the balance owed. *Id.*

Debtor has filed an adversary proceeding in this case asserting these same claims. Movant and the other defendants have filed Motions to Dismiss which are before the court on a later date.

Debtor has not disputed the existence of the loan or that money is owed. Debtor admits she has suffered a loss of income, a bad economy has affected her, and so has the COVID-19 pandemic.

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.

On stay relief motions, the party requesting relief has the burden of proof on the issue of the debtor's equity in the property; and the party opposing relief has the burden of proof on all other issues. § 362(g). Movant has met their burden of proof here. They have used Debtor's own valuation of Property and offered evidence that there is no equity in Property after accounting for the liens. Debtor contests some components of the claim but has provided no evidence contradicting that there is a lack of equity.

Decisions on stay relief motions are discretionary with the court. *Benedor Corp. v. Conejo Enters. Inc. (In re Conejo Enters. Inc.)*, 96 F.3d 346, 351 (9th Cir. 1996). The range of issues before the court on these motions is limited. *See, Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985), *overruled on other grounds by Travelers Cas. & Sur. Co. v. Pac. Gas & Elec. Co.*, 549 U.S. 443 (2007). Though a court can "consider" title defects in interests on these motions, *Briggs v. Stovin (In re Luz Int'l, Ltd.)*, 219 B.R. 837, 842 (B.A.P. 9th Cir. 1998), the motion is not to be used to determine scope and enforceability of a creditor's interest in property of the estate which requires an adversary proceeding. *GMAC Mortg. Corp. v. Salisbury (In re Lolee)*, 241 B.R. 655, 660 (B.A.P. 1999). Moving creditors need only establish a "colorable claim" to the asset at issue on a stay relief motion. *Veal v. Am. Home Mortg. Servicing, Ins. (In re Veal)*, 450 B.R. 897, 906 (B.A.P. 9th Cir. 2011).

Debtor's opposition does not persuade the court that Movant has no colorable claim to Property. There is no dispute the loan was made, deed of trust executed, loan modification signed, and Debtor performed until circumstances prevented performance. The documents submitted by Movant which are not specifically contested more than establish that Movant has a legitimate claim or lien against Property. *See, Grella v.*

Salem Five Cent Sav. Bank, 42 F. 3d 26, (1st Cir. 1994), cited with approval in *Luz*, 219 B.R. at 842.

Debtor's position that the lost note precludes Movant from foreclosing is incorrect. No party needs physical possession of the promissory note to start a non-judicial foreclosure. Cal. Civ. Code § 2924(a)(1), *Debrunner v. Deutsche Bank Nat'l Trust Co.*, 204 Cal. App. 4th 440, 443 (2012). The extensive and specific provisions that govern non-judicial foreclosures in California are exhaustive and borrowers raising other legal impediments to note enforcement do not support the halting or cessation of the process. See, *Moller v. Lien*, 25 Cal. App. 4th 822; 30 Cal. Rptr. 2d 777, 785 (1995) (provisions in Article 3 of the Commercial Code do not impede non-judicial foreclosure). As mentioned, there are many facts here establishing Movant's interest in Property.

That said, Debtor here has filed an adversary proceeding raising various issues and defenses to Movant's foreclosure. But Debtor has also stressed that Debtor wants to prosecute the pending action in Kern County Superior Court which has a trial date in early 2023.

There are three problems with Debtor's position. First, the defendants have filed a motion to dismiss the adversary proceeding raising jurisdictional issues. Should the court decide that it has no jurisdiction, Debtor's adversary proceeding cannot go forward immediately. Second, Debtor is not the real party in interest to prosecute the Kern County Action or the adversary proceeding. Currently that party is the Chapter 7 Trustee. Third, to the extent the adversary proceeding raises the same or similar issues as the Kern County action, this court may abstain and not hear the adversary proceeding even if Debtor gets passed the other issues. So, now there is no basis to defer ruling on this motion.

Debtor's argument that the "Homeowner's Bill of Rights" has been violated is also unpersuasive. Until the stay is terminated, Debtor's status as a bankruptcy debtor precludes any claim under the "Homeowner's Bill of Rights." Cal. Civ. Code § 2920.5(b)(2)(C).

In sum, Debtor has not met the burden of proof under § 362(g). Accordingly, Movant's Motion for Relief from Stay is GRANTED pursuant to § 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 additional relief is granted.

The stay of the effectiveness of the order under Rule 4001(a)(3) will not be waived as movant has shown no need for the waiver.

No attorney's fees will be awarded as movant claims there is no equity in Property. Even if over-secured, the movant must separately file and set for hearing a motion for compensation in compliance with the LBR and Federal Rules of Bankruptcy Procedure.

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

4. [22-10569](#)-B-7 **IN RE: SUMAIRA RAHMAN**
[JCW-4](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-11-2022 [[104](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

MTGLQ Investors, LP, by and through its servicing agent Rushmore Loan Management Services, LLC (collectively, "Movant" unless otherwise indicated), asks the court to terminate the automatic stay of 11 U.S.C. § 362(a) to permit the completion of a non-judicial foreclosure of its interest in the debtor's property at 1897 Ribera Drive, Oxnard, CA 93030 ("Property") under § 362(d)(1). Doc. #104. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3), an award of attorneys' fees and costs, and to allow Movant to contact the Debtor to comply with Cal. Civ. Code § 2923.5. *Id.*

Though not required because opposition, if any, shall be presented at the hearing, Sumaira Rahman ("Debtor"), *pro se*, opposed. Doc. #113.

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, 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.

Movant's predecessor, JPMorgan Chase Bank, N.A., lent Debtor \$412,450.00 secured by a deed of trust encumbering Property in 2008. Doc. #106, *Ex. 1*. The deed of trust was assigned to Chase Home Finance, LLC, in October 2010. *Id.*, *Ex. 2*. Debtor entered into a loan modification agreement with Chase Home Finance in 2011 and a Home Affordable Modification Agreement with JPMorgan Chase Bank in 2015. *Id.*, *Ex. 4*. Thereafter, JPMorgan Chase Bank assigned the deed of trust to Movant. See Claim 3, at 33.

Under the deed of trust, as of July 27, 2022, Debtor is delinquent \$141,635.60. Doc. #107. This amount consists of 78 missed pre-payments and 3 missed post-petition payments, all ranging from \$1,654.34 to \$2,147.86. *Id.* Two additional payments of \$2,147.86 will become due August and September 1, 2022. *Id.* Debtor owes a total of \$623,006.25, consisting of a principal balance of \$481,547.86, \$60,039.94 in interest, and \$81,418.45 in costs.

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).

After the review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has missed 78 pre-petition payments and 3 post-petition payments totaling \$141,635.60. Doc. #107. Debtor owes an outstanding balance of \$623,006.25. *Id.*

In response to Movant's motion, Debtor claims to have not been served as required by Rule 7004. Doc. #113. Additionally, Debtor does not waive service, Debtor was not given 30 days' notice, and Debtor did not receive the motion until August 15, 2022. *Id.*

Rule 7004(b)(9), applicable in motions for relief from the automatic stay under Rules 4001(a) and 9014(b), provides that service on the debtor can be accomplished by mailing, via regular U.S. mail, a copy of the pleadings to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing.

Here, the petition indicates that Debtor resides at 12104 Timberpointe Dr., Bakersfield, CA 93312, but Debtor's mailing address is at Property: 1897 Ribera Dr., Oxnard, CA 93030. Doc. #1, at 2.

Meanwhile, Movant served Debtor on August 11, 2022 by U.S. mail at:

Sumaira Rahman
1897 Ribera Dr.
Oxnard, CA 93030

Doc. #109. This is the same address where Movant's first motion for relief from the automatic stay as to the Timberpointe Drive Property (matter #3 above) was served. Doc. #90. Debtor responded to both motions. Docs. ##113-14. Both responses list the same address in the top left corner of the caption. Debtor appears to have received both motions and did not object to service of the first motion above. Therefore, Movant properly served Debtor at 1897 Ribera Dr., Oxnard, CA 93030 under Rule 7004(b)(9), which is the address designated as Debtor's mailing address in the petition and in the caption on Debtor's pleadings.

Second, Debtor claims that this motion was filed on less than 30 days' notice. But under LBR 4001-1(a), motions for relief from the automatic stay shall be set for hearing in accordance with LBR 9014-1. LBR 9014-1(f) (2) permits Movant to file this motion for relief from the automatic stay on 14 days' notice, which Movant did here. Since the motion was filed on less than 28 days' notice, written opposition is not required and may be submitted at the hearing. Debtor may appear at the hearing to oppose Movant's motion, but the motion was not improperly filed and served on insufficient notice.

Lastly, Debtor received the motion on August 14, 2022, which is still more than 14 days before the hearing. But even if it had been received less than 14 days before the hearing, Movant properly filed and served the motion 14 days before the hearing. No service or noticing defect exists here.

Accordingly, this matter will be called and proceed as scheduled. The court intends to GRANT this motion pursuant to 11 U.S.C. § 362(d) (1) to permit 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 ordered.

The stay of the effectiveness of the order under Rule 4001(a) (3) will not be waived as movant has shown no need for the waiver.

The request for attorney's fees will be denied. Though Debtor is over-secured under 11 U.S.C. § 506(b), the movant must separately file and set for hearing a motion for compensation in compliance with the LBR and Rules. If movant does, then the court will consider that motion on its merits at the appropriate time.

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

5. [22-10194](#)-B-7 **IN RE: ANGELA GALINDO**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
8-12-2022 [[24](#)]

ANGELA GALINDO/MV
R. BELL/ATTY. FOR DBT.

NO RULING.

On February 7, 2022, Angela Zusetette Galindo ("Debtor") applied to pay the filing fee in installments. Doc. #4. The court granted the application on February 14, 2022 and ordered Debtor to pay the \$338 filing fee in four installments between March and June, 2022. Doc. #7.

On June 15, 2022, the clerk of the court issued a *Notice of Intent to Close Chapter 7 Case Without Entry of Discharge Due to Failure to Pay Filing Fee and Administrative Fee* ("Filing Fee Notice"). Doc. #18. The Filing Fee Notice informed Debtor that the case would be closed without further notice unless Debtor paid the full amount of the unpaid filing fee and administrative fee (\$338) or filed a motion for an extension of time. *Id.*

Debtor filed a letter within 30 days requesting an extension of time to pay the filing fee currently owed. Doc. #20. Debtor was diagnosed with COVID-19 in September 2020, was hospitalized for three weeks, and suffers from long term effects, including damage to lungs. Debtor was on disability for eight months but is now working. However, Debtor's health has suffered dramatically, which has resulted in increased medical expenses and reduced income due to missing work for doctors' appointments. *Id.*

The court ordered Debtor to file a proper request to waive the chapter 7 filing fee not later than August 15, 2022. Doc. #21.

Angela Zusetette Galindo ("Debtor") timely filed this application for waiver of the chapter 7 filing fee. Doc. #24. The court set this application for hearing due to the discrepancy between the schedules and application. Doc. ##27-#28.

Thereafter, Debtor filed a second application to pay the filing fee in installments on August 30, 2022. Doc. #31.

According to the petition, Debtor receives \$1,412.67 in monthly income from unemployment compensation (\$16,952.04 annually). Doc. #1, *Sched. I*. After payment of Debtor's expenses, \$1,705.00 monthly, Debtor has a monthly deficit of -\$292.33. *Id.*, *Sched. J*. Debtor does not claim any dependents. *Id.*

In the application, Debtor claims to have \$2,059.00 in monthly income for a family of one, with \$2,258.00 in expenses. Doc. #24.

Under 28 U.S.C. § 1930(f), the court may waive the filing fee for filing a case under chapter 7 if such individual's income is less than 150% of the income poverty line for a family of applicable size and such individual is unable to pay the fee in installments. So, to qualify for a filing fee waiver, Debtor must show an income below 150% of the federal poverty guidelines based on her family size, as published by the United States Department of Health and Human Services ("HHS"). Those guidelines provide the following income thresholds:

Family Size	Monthly Income	Annual Income
1	\$1,698.75	\$20,385.00
2	\$2,288.75	\$27,465.00
3	\$2,878.75	\$34,545.00
4	\$3,468.75	\$41,625.00
5	\$4,058.75	\$48,705.00
6	\$4,648.75	\$55,785.00

See HHS Poverty Guidelines for 2022.¹

Based on Debtor's scheduled monthly income of \$1,412.67, she would qualify for a filing fee waiver. However, the application says she has monthly income of \$2,059.00, which slightly exceeds 150% of the federal poverty guideline for a family size of one: \$1,698.00.

This matter will be called as scheduled to inquire about Debtor's current monthly income from all sources and the discrepancy between the documents.

¹ See <https://www.uscourts.gov/sites/default/files/poverty-guidelines.pdf> (visited Sept. 1, 2022). The court may take judicial notice *sua sponte* of information published on government websites. Fed. R. Evid. 201(c)(1); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

10:30 AM

1. [22-10885](#)-B-11 **IN RE: SYNCHRONY OF VISALIA, INC.**
[LKW-6](#)

MOTION TO EXTEND TIME FOR DEBTOR TO FILE PLAN
8-22-2022 [[73](#)]

SYNCHRONY OF VISALIA, INC./MV
LEONARD WELSH/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 after hearing.

Synchrony of Visalia, Inc. ("Debtor") moves for an order extending the time to file a Plan of Reorganization. Doc. #73.

Written opposition was not required and may be submitted at the hearing. In the absence of opposition, this motion will be GRANTED.

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, 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.

Debtor filed chapter 7 bankruptcy on May 25, 2022. Doc. #1. On June 14, 2022, Debtor sought to voluntarily convert this case to subchapter V of chapter 11, which was granted on July 11, 2022. Docs. #27; #40.

Debtor intends to file a Plan of Reorganization ("Plan") on or before October 7, 2022 – a date 90 days after the case was converted to chapter 11. However, a question has arisen as to whether Debtor's deadline to file the Plan runs from the date Debtor filed the chapter 7 (May 25, 2022), or the date Debtor's chapter 7 case was converted to chapter 11 (July 11, 2022). If the deadline runs from the date Debtor filed the chapter 7 case, then the Plan is due not later than August 23, 2022. But if the deadline is instead July 11, 2022, then the Plan must be filed not later than October 9, 2022.

Additionally, Debtor needs time to (a) determine how it can improve its business and increase its income available for payment to creditors and (b) formulate a Plan that will comply with the

Bankruptcy Code. Doc. #75. For that reason, Debtor filed this motion and requests that the court set October 7, 2022 as the deadline for Debtor to file a Plan. Doc. #73.

11 U.S.C. § 1189(b) provides that:

The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend the period if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable.

§ 1189(b). In converted cases, the statute is unclear whether the 90-day period runs from the date the debtor filed the underlying chapter 7 case, or whether it is from the date the case was converted to chapter 11. Courts have held that the 90-day rule is not violated if the debtor in a converted case requests an extension of time within 90 days of the date the debtor filed its chapter 7 case. *In re Treptin*, 617 B.R. 841 (Bankr. D. M.D. 2020). Additionally, failure to file a plan within the 90-day period is not jurisdictional, so "a Court is not stripped of jurisdiction over the debtor's case on day 91 post-order for relief if the debtor has not yet filed a plan. *In re Baker*, 625 B.R. 27, 32 (Bankr. S.D. Tex. 2020).

Debtor timely filed this request for additional time before expiration of the August 24, 2022 deadline to file a plan under § 1189(b). Circumstances exist for which Debtor should not be justly held accountable. Since this case was converted from chapter 7 to subchapter V of chapter 11, Debtor would only have 44 post-conversion days to file the Plan if forced to abide by the 90-day deadline running from the chapter 7 petition date.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court intends to GRANT this motion and extend the deadline for Debtor to file the Plan to October 7, 2022.

11:00 AM

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

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

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

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

DISPOSITION: Concluded.

ORDER: The court will issue an order.

On August 30, 2022, the parties jointly stipulated to dismiss this adversary proceeding with prejudice. Doc. #16. Under Fed. R. Civ. P. 41(a)(1)(A)(ii), *incorporated by* Fed R. Bankr. P. 7041, the stipulation of dismissal signed by all parties operates as a voluntary dismissal by the plaintiff.

Accordingly, this status conference will be concluded and taken off calendar pursuant to the dismissal stipulation. The clerk of the court will close the adversary proceeding without notice. After the adversary proceeding has been closed, the parties will have to file an application to reopen the adversary proceeding if further action is required. The court will issue an order concluding the status conference.

2. [22-10569](#)-B-7 **IN RE: SUMAIRA RAHMAN**
[22-1014](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-5-2022 [[1](#)]

RAHMAN ET AL V. MTGLQ
INVESTORS LP ET AL

NO RULING.

Defendants MTGLQ Investors, LP ("MTGLQ"), Rushmore Loan Management Services, LLC ("Rushmore"), and Quality Loan Service Corporation ("Quality") have a pending *Motion to Dismiss Adversary Complaint Pursuant to Rule 12(b)(6)* ("Motion to Dismiss") set for hearing in matter #3 below. JCW-1. The court intends to CONTINUE the Motion to

Dismiss to September 21, 2022 at 11:00 a.m. to allow Quality and Rushmore to file corporate ownership statements.

Fed. R. Bankr. P. ("Rule") 7007.1 requires any nongovernmental corporation that is a party to an adversary proceeding, other than the debtor, to file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. Rule 7007.1(a). The statement shall be filed with the corporation's first appearance, pleading, motion, response, or other request addressed to the court and shall be supplemented whenever the information required changes. Rule 7007.1(b) (1) and (2).

A fillable *Statement Regarding Ownership of Corporate Debtor/Party* ("Corporate Ownership Statement") is available on the court's website as Form EDC 3-500 (Rev. 12/2012).²

11 U.S.C. § 101(9) defines the term "corporation"—

(A) includes—

- (i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;
- (ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;
- (iii) joint-stock company;
- (iv) unincorporated company or association; or
- (v) business trust; but

(B) does not include limited partnership.

§ 101(9) (A) and (B).

Therefore, MTGLQ, as a limited partnership, is not required to file a Rule 7007.1 Corporate Ownership Statement pursuant to § 101(9) (B). But Rushmore, an LLC, and Quality, a corporation, are required to file Corporate Ownership Statements. No such statements have been filed.

This status conference will be called and proceed as scheduled.

² See Corporate Ownership Statement, Form EDC 3-500 (Rev. 12/2012) <https://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.003-500.pdf> (visited Aug. 31, 2022).

3. [22-10569](#)-B-7 **IN RE: SUMAIRA RAHMAN**
[22-1014](#) [JCW-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
8-4-2022 [\[10\]](#)

RAHMAN ET AL V. MTGLQ
INVESTORS LP ET AL
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Continued to September 21, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

Defendants MTGLQ Investors, LP ("MTGLQ"), Rushmore Loan Management Services, LLC ("Rushmore"), and Quality Loan Service Corporation ("Quality") move to dismiss this adversary complaint. Doc. #10.

Fed. R. Bankr. P. ("Rule") 7007.1 requires any nongovernmental corporation that is a party to an adversary proceeding, other than the debtor, to file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. Rule 7007.1(a). The statement shall be filed with the corporation's first appearance, pleading, motion, response, or other request addressed to the court and shall be supplemented whenever the information required changes. Rule 7007.1(b)(1) and (2).

A fillable *Statement Regarding Ownership of Corporate Debtor/Party* ("Corporate Ownership Statement") is available on the court's website as Form EDC 3-500 (Rev. 12/2012).³

11 U.S.C. § 101(9) defines the term "corporation" as follows:

(A) includes—

- (i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;
- (ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;
- (iii) joint-stock company;
- (iv) unincorporated company or association; or
- (v) business trust; but

(B) does not include limited partnership.

§ 101(9) (A) and (B).

Therefore, MTGLQ, as a limited partnership, is not required to file a Rule 7007.1 Corporate Ownership Statement pursuant to § 101(9) (B). But

Rushmore, an LLC, and Quality, a corporation, are required to file Corporate Ownership Statements. No such statements have been filed.

Accordingly, this motion will be CONTINUED to September 21, 2022 at 11:00 a.m. so that Rushmore and Quality can file Rule 7007.1 Corporate Ownership Statements. If those statements have not been filed before the continued hearing date, the court may issue an *Order to Show Cause* why this motion should not be stricken for failure to comply with Rule 7007.1.

³ See Corporate Ownership Statement, Form EDC 3-500 (Rev. 12/2012) <https://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.003-500.pdf> (visited Aug. 31, 2022).

11:30 AM

1. [22-11040](#)-B-7 IN RE: KAREN SHAH

PRO SE REAFFIRMATION AGREEMENT WITH VALLEY STRONG CREDIT
UNION
7-20-2022 [[21](#)]

NO RULING.