



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

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

Hearing Date: Friday, September 8, 2023

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

Parties in interest and members of the public may connect to ZoomGov, free of charge, using the information provided:

Video web address: <https://www.zoomgov.com/j/1602893714?pwd=bVhISVFqeExiTU5ZQ0JpTlVtQmFEQT09>
Meeting ID: 160 289 3714
Password: 860134
ZoomGov Telephone: (669) 254-5252 (Toll-Free)

Please join at least 10 minutes before the start of your hearing. You are required to give the court 24 hours advance notice on [Court Calendar](#).

To appear remotely for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Procedures and Guidelines](#) for these and additional instructions.
3. Parties appearing through CourtCall are encouraged to review the [CourtCall Appearance Information](#).

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.

9:30 AM

1. [23-10501](#)-B-13 **IN RE: BEATRICE MCCARTY**
[SL-2](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
8-7-2023 [[24](#)]

SCOTT LYONS/ATTY. FOR DBT.
CONTINUED TO 9/13/23 WITHOUT ORDER

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

DISPOSITION: CONTINUED TO SEPTEMBER 13, 2023

NO ORDER REQUIRED

Scott Lyons, Counsel for Debtor ("Counsel"). initially filed this Motion for Compensation on August 7, 2023, with a hearing set for September 8, 2023. Doc. ##24, 25. On August 11, 2023, Counsel filed an Amended Motion to correct certain inaccuracies in the original motion, accompanied by a new Notice resetting this matter for September 13, 2023. Doc. ## 28, 29.

Accordingly, this matter is CONTINUED TO SEPTEMBER 13, 2022.

2. [18-11805](#)-B-13 **IN RE: TIMOTHY JARRELLS**
[MHM-1](#)

MOTION TO DISMISS CASE
8-4-2023 [[30](#)]

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED

The chapter 13 trustee withdrew this motion on August 30, 2023. Doc. #38. Accordingly, this matter will be taken off calendar pursuant to the trustee's withdrawal.

3. [22-12129](#)-B-13 **IN RE: BILLIE TENA**
[MHM-3](#)

MOTION TO DISMISS CASE
8-4-2023 [[38](#)]

CARL GUSTAFSON/ATTY. FOR DBT.

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED

The chapter 13 trustee withdrew this motion on September 6, 2023. Doc. #43. Accordingly, this matter will be taken off calendar pursuant to the trustee's withdrawal.

4. [23-10437](#)-B-13 **IN RE: CHAD/STEPHANIE LENABURG**
[SL-1](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
8-1-2023 [[24](#)]

SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted as modified.

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

Scott Lyons ("Applicant"), attorney for Chad and Stephanie Lenaburg ("Debtors"), seek interim compensation in the sum of \$8,857,67 under 11 U.S.C. § 331, subject to final review pursuant to § 330. Doc. #24. This amount consists of \$8,069.78 in fees and \$888.78 in expenses from January 29, 2020, through July 31, 2023. *Id.*

Debtors executed a statement of consent dated July 31, 2023, indicating that they had read the fee application and approved the same. *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). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

Section 3.05 of Debtors' confirmed chapter 13 plan provides Debtors' attorney was paid \$1,574.00 prior to filing the case and, subject to court approval, additional fees of \$15,000.00 to be e paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329 & 330 and Fed. R. Bankr. P. 2002, 2016-17. Doc. #3.

This is Applicant's first interim fee application. The Application avers the following individuals at Applicant's firm provided legal services to Debtors at the rates outlined below:

Professional	Rate	Hours	Fees
Scott Lyons, Attorney	\$400.00	0.84	\$336.00
Louis Lyons, Attorney	\$350.00	10.98	3,668.00
Sylvia Gutierrez, Legal Secretary	\$150.00	27.60	\$4,065.00
Total Fees			\$8,069.00

Doc. ##25, 26. The Application also assert that expenses were incurred as follows:

Postage	\$54.78
Reproduction & Stationary	\$415.00
Filing Fees	\$345.00
Other: Credit Reports, Court Call Fee	\$74.00
Total Expenses	\$888.78

These combined fees and expenses total **\$8,957.78**.

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

Applicant's services here included, without limitation: (1) \$1,012.50 for pre-petition consultation and fact-gathering, (2) \$2,151.00 for preparation of the petition, schedules, and forms, (3)\$486.50 for subsequent amendments to the petition and/or schedules, (4) \$175.00 for preparation for the 341 Meeting of Creditors, (5) \$1,547.00 for the filing of the instant fee application, (6) \$2,217.00 for "case administration," and (7) \$480.00 for "other/communication-correspondence. Doc. #24.

While the court generally finds these services and expenses reasonable, actual, and necessary, the amount of billable hours charged simply for preparing this fee application (\$1,547.00 for 6.42 hours) gives the court pause. Furthermore, the court notes that Applicant seeks \$345.00 in expenses for "Filing Fees." Doc. #24. However, the Form 2030 Disclosure of Compensation of Attorney for Debtors which accompanied the petition states that "\$313.00 of the

filing fee has been paid." Doc. #1, pg. 81. This matter will proceed as scheduled so that Applicant may respond to court's inquiries about these two matters of concern.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED subject to any modifications at the hearing arising from the concerns previously alluded to. Subject to any such modifications, Applicant will be awarded \$8,069.00 in fees as reasonable compensation for services rendered and \$888.78 in reimbursement for actual, necessary expenses, for a total award of \$8957.78, on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. After application of the \$1,574.00 paid by Debtors prepetition, the chapter 13 trustee will be authorized, in the trustee's discretion, to pay Applicant the remaining balance of \$7,383.92 for services rendered and costs incurred between January 29, 2020, and July 31, 2023.

5. [23-11047](#)-B-13 **IN RE: JOSE VERA AND ROSA LEON DE VERA**
[SLL-1](#)

MOTION TO CONFIRM PLAN
7-31-2023 [\[30\]](#)

ROSA LEON DE VERA/MV
STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: **Continued to October 11, 2023, at 9:30 a.m.**

ORDER: The court will issue an order.

Jose Vera and Rosa Leon De Vera ("Debtors") move for an order confirming the *First Modified Chapter 13 Plan* dated July 31, 2023. Doc. ##30m 33.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation of the plan under 11 U.S.C. § 1325(a)(3) and (a)(6) because the Debtors will not be able to make all payments under the plan and they are currently deficient in plan payments by \$1,130.70 as of July 2023. Doc. #40.

This motion to confirm plan will be CONTINUED to **October 11, 2023, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's and Creditor's objections to confirmation are withdrawn, the Debtor shall file and serve a written response to the objections no later than fourteen (14) days before the continued hearing date. The response shall specifically address each issue raised in the objection(s) to confirmation, state whether each issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee shall file and serve a reply, if any, no later than seven (7) days prior to the hearing date.

If the Debtor elects to withdraw the 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 seven (7) days before the continued hearing date. If the Debtor does not timely file a modified plan or a written response, the objection will be sustained on the grounds stated, and the motion will be denied without further hearing.

6. [19-11856](#)-B-13 **IN RE: JAIME BRYAN**
[NES-3](#)

MOTION FOR COMPENSATION FOR NEIL E SCHWARTZ, DEBTORS
ATTORNEY(S)
8-4-2023 [\[37\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: GRANTED.

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

Neal E. Schwartz ("Applicant"), attorney for Jaime Bryan ("Debtor"), seeks interim compensation in the sum of \$1,970.00 under 11 U.S.C. § 331, subject to final review pursuant to § 330. Doc. #37. This amount consists of \$1,960.00 in fees and \$10.00 in expenses from December 23, 2020, through June 14, 2023. *Id.*

Debtor executed a statement of consent dated August 3, 2023, indicating that Debtor had read the fee application and approved the same. *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). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

Section 3.05 of Debtors' confirmed chapter 13 plan provides Debtors' attorney was paid \$1,574.00 prior to filing the case and, subject to court approval, additional fees of \$15,000.00 to be e paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329 & 330 and Fed. R. Bankr. P. 2002, 2016-17. Doc. #3.

This is Applicant's first interim fee application. The Application avers the following individuals at Applicant's firm provided legal services to Debtors at the rates outlined below:

Professional	Rate	Hours	Fees
Neal E. Schwartz, Attorney	\$300.00	4.20	\$1,960.00
Total Fees			\$1,960.00

Doc. ##25, 26. The Application also assert that expenses were incurred as follows:

Postage	\$10.00
Total Expenses	\$10.00

These combined fees and expenses total **\$1,970.00**.

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

Applicant's services here included, without limitation: (1) \$600.00 for preparing this fee application, (2) \$700.00 for matters pertaining to Discharge and Case Closing, and (3) \$660.00 for matters pertaining to Case Administration. Doc. #37.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$1,960.00 in fees as reasonable compensation for services rendered and \$10.00 in reimbursement for actual, necessary expenses, for a total award of \$1,970.00, on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. The chapter 13 trustee will be authorized, in the trustee's discretion, to pay Applicant \$1,970.00 for services rendered and costs incurred between December 23, 2020, and June 14, 2023.

7. [22-10760](#)-B-13 **IN RE: MATTHEW CRIPPEN**
[MHM-4](#)

MOTION TO DISMISS CASE
8-4-2023 [\[93\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted and modified and case converted to Chapter 7.

ORDER: The court will issue an order.

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by Matthew Crippen ("Debtor") that is prejudicial to creditors and 11 U.S.C. § 1307(c)(6) for failure to make all payments due under the plan. Doc. #93. Debtor did not oppose.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and failed to make all payments due under the plan as required by (11 U.S.C. § 1307(c)(6)).

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay and 11 U.S.C. § 1307(c)(6) for failure to make all payments due under the plan.

In addition, the trustee has determined that there is a liquidation amount of \$65,378.00, after trustee compensation. Doc. #95. This liquidation amount is comprised of the value of Debtor's extensive personal property that may be of benefit to the estate in a Chapter 7. *Id.* Therefore, conversion, rather than dismissal, serves the interests of creditors and the estate. *Id.*

Accordingly, the motion will be GRANTED AS MODIFIED, and the case CONVERTED TO CHAPTER 7.

8. [19-10170](#)-B-13 **IN RE: JOSE/TERESA MORENO**
[MHM-3](#)

MOTION TO DISMISS CASE
8-4-2023 [\[50\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c) (1) for unreasonable delay by Jose and Teresa Moreno ("Debtors") that is prejudicial to creditors and 11 U.S.C. § 1307(c) (6) for failure to make all payments due under the plan. Doc. #50. Debtors did not oppose.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f) (1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f) (1) (B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the Debtors that is prejudicial to creditors (11 U.S.C. § 1307(c) (1)) and failed to make all payments due under the plan as required by (11 U.S.C. § 1307(c) (6)).

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c) (1)." *Ellsworth v.*

Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c) (1) for unreasonable delay and 11 U.S.C. § 1307(c) (6) for failure to make all payments due under the plan.

In addition, the trustee has reviewed the schedules and determined that the Debtors' assets are over encumbered and are of no benefit to the estate. Because there is no equity to be realized for the benefit of the estate, dismissal is in the best interest of creditors and the estate. Doc. #50.

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

9. [23-11074](#)-B-13 **IN RE: PATRICK BRADDOCK**
[MHM-1](#)

MOTION TO DISMISS CASE
8-7-2023 [\[21\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c) (1) for unreasonable delay by Patrick Warren Braddock ("Debtor") that is prejudicial to creditors and 11 U.S.C. § 1307(c) (4) failed to make all payments due under the plan. Doc. #21. Debtor did not oppose.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f) (1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f) (1) (B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and failed to make all payments due under the plan as required by (11 U.S.C. § 1307(c)(4)).

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay and 11 U.S.C. § 1307(c)(6) for failed to make all payments due under the plan.

In addition, the trustee has reviewed the schedules and determined that the Debtor's assets are over encumbered and are of no benefit to the estate. Because there is no equity to be realized for the benefit of the estate, dismissal is in the best interest of creditors and the estate. Doc. #21.

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

10. [22-11384](#)-B-13 **IN RE: JACOB TORRES**
[RSW-1](#)

MOTION TO SELL
8-18-2023 [\[21\]](#)

JACOB TORRES/MV
ROBERT WILLIAMS/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.

The debtor, Jacob Torres ("Debtor"), asks this court for authorization to sell a parcel of residential real property located at 5413 Giverny Way, Bakersfield, California ("Property") to AGI Properties LLC ("AGI") for \$387,000.00, subject to higher and better bids. Doc. #21. Freedom Mortgage Corporation ("FMC") now holds the deed of trust, and Debtor owes approximately \$360,382.00 on the mortgage. *Id.* AGI has offered to purchase the Property for the aforementioned price "subject to the current loan and will pay sufficient funds to bring the loan current." *Id.* Debtor avers that the purchase price is "fair and reasonable" and the offer from AGI was unsolicited by Debtor. Doc. #23. There will be no broker commission. *Id.*

Written opposition was not required and may be presented 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.

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

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *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 § 363, a bankruptcy court "should determine only whether the [debtor]'s judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he [debtor]'s business judgment is to be given great judicial deference." *Id.* (citing *In re Psychometric Systems, 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)).

In the instant case, Debtor's Schedule A/B lists the Property has having a current value of \$406,500.00. Sch. A/B, Doc. #1. Debtor claims an exemption on the property in the amount of \$189,050.00 pursuant to C.C.P. § 704.730. Sch. C, Doc. #1. The Property is encumbered by a mortgage owed to FMC in the amount of \$360,382.00 and a tax lien owed to the Kern County Tax Collector in the amount of \$2,295.95. Sch D, Doc. #1. Debtor's Confirmed Plan provides that he will pay both the \$27,960.00 arrearage on the FMC mortgage and the tax lien through the plan at a rate of \$2,1465.36 and \$628.64, respectively, while presumably continuing to pay the ongoing mortgage directly to FMC. Doc. #3. However, the later assumption is belied by Debtor's Schedule J, which lists mortgage/home ownership expenses of \$0.00. Sch. J, Doc. #1.

On or about June 29, 2023, the Kern County Tax Collector filed a notice advising that its claim had been satisfied fully. *See Doc. (1) filed on June 29, 2023*. Thus, the only lien on the property of which the court is aware is the FMC mortgage.

Based on the Debtor's averments, it appears that the sale price will be sufficient to pay off the mortgage and even provide some kind of dividend, and on that basis, the sale appears to be in the best interests of the estate. However, the motion and moving papers are silent on how any such dividend will be distributed. Debtor's Schedule C asserts an exemption in the property of \$189,050.00, while the amount by which the proposed sale price exceeds the outstanding mortgage is \$26,618.00.

Proposed sale price of Property		\$387,000.00
Approximate amount of first mortgage payoff	-	\$360,382.00
Net proceeds	-	\$26.618.00

Further complicating matters, the court is also scheduled to hear Debtor's Motion for Authorization to Receive Funds from CalHFA on September 8, 2023. (see Item #11, below). See Doc. #25. Pursuant to that motion, Debtor seeks to receive funds from CalHFA through the California Mortgage Relief Program that will be paid directly to FMC without passing through the estate. *Id.* It is unclear to the court what impact that will have on any distribution from the sale.

In short, the court has several questions about the proposed sale. If there is no opposition at the hearing and Debtor provides satisfactory clarification, then this motion will be GRANTED, and the sale will proceed subject to higher and better bids. If opposition is presented at the hearing, the court will consider the opposition, determine whether further hearing is proper, and continue if a further hearing is necessary.

Any order approving the sale will need to be signed by the Trustee. Further, the order will require the Trustee be given and approve a seller's final closing statement before the sale is completed.

Any party wishing to overbid must be present at the time of the hearing. No warranties or representations are included with the Property; it will be sold "as-is."

11. [22-11384](#)-B-13 **IN RE: JACOB TORRES**
[RSW-2](#)

MOTION FOR AUTHORIZATION TO RECEIVE FUNDS FROM CALHFA
8-18-2023 [\[25\]](#)

JACOB TORRES/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation determined at the hearing.

Debtor Jacob Torres ("Debtor") brings this *Motion for Authorization to Receive Funds from CalHFA*. Doc. #25. The Debtor filed for Chapter 13 on August 13, 2022, and his 60-month plan was confirmed on October 14, 2022. *Id.* The plan proposes to pay 100% to allowed claims of general creditors. *Id.* Debtor avers that he is current on his plan payments and that he is eligible to receive funds from the California Housing Finance Agency ("CalHFA") through the California Mortgage Relief Program ("CMRP"). Doc. #27. Debtor proposes that these funds be paid directly to his mortgage provider and not become part of the bankruptcy estate. *Id.*

Written opposition was not required and may be presented at the 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, 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.

Allowed unsecured creditors are already receiving a 100% distribution through the plan. Thus, there appears to be no obvious need for the CalHFA payments to pass through the estate. However, the motion itself contains no information about exactly what funds are to be received and what impact such disbursement will have on the bankruptcy case. Hopefully, Debtor can provide further information to elucidate these issues.

The court may deny the motion for lack of substantive support for the relief requested.

12. [23-10787](#)-B-13 **IN RE: PAUL/ROBIN OSEGUEDA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-23-2023 [\[26\]](#)

BENNY BARCO/ATTY. FOR DBT.
\$78.00 INSTALLMENT FILING FEE PAID 8/25/23

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

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

13. [23-10992](#)-B-13 **IN RE: ANGELITA MARQUEZ**
[PBB-1](#)

MOTION TO AVOID LIEN OF ABSOLUTE BONDING CORPORATION
8-2-2023 [\[47\]](#)

ANGELITA MARQUEZ/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Angelita Marquez ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Absolute Bonding Corporation ("ABC") in the sum of \$10,699.42. and encumbering residential real property located at 621 A Street, Fresno, California 93706 ("Property"). Doc. #47. According to the filings and moving papers, the Property has a fair market value of \$210,500.00. Doc. #47. The court takes notice of a reference in a table on page 3 of the Motion which states, "House Value \$780,000.00," but the court believes this to have been included in error considering the clear statements as to the Property's \$210,500.00 value stated elsewhere.

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). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

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

Here, a judgment was entered against Debtor in favor of Creditor in the amount of \$6,310.00 on August 10, 2016. Ex D, Doc. #50. The abstract of judgment was issued on March 10, 2017, and was recorded in Fresno County on March 21, 2017. *Id.* That lien attached to Debtor's interest in Property. *Id.* On August 2, 2023, Debtor filed a Proof of Claim on behalf of Creditor, asserting that the current amount owed is \$10,699.42. Claim #7. Although Debtor checked the box for "Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A)," no such statement is attached to the proof of claim.

As of the petition date, Property had an estimated fair market value of \$210,500.00. Sch. A/B, Doc. #1, Doc. #50. Debtor claimed a \$340,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. Sch. C, *Id.*

The Property is encumbered by a mortgage in favor of PHH Mortgage Servicing in the amount of \$43,617.07. Sch. D, *Id.* Schedule D also reflects a Judgment that awards one-half the equity, plus \$5,000.00 to Debtor's ex-husband, though that judgment is on appeal. *Id.* The motion itself does not address what impact, if any, this equity award to Debtor's ex-husband has on the instant motion. Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. PHH Mortgage	\$43,617.07	Unknown	Unavoidable
2. ABC's Lien	\$10,699.42	03/21/1	Avoidable

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

Strict application of the § 522(f)(2) formula with respect to ABC's lien is illustrated as follows:

Amount of judgment lien		\$10,699.42
Total amount of unavoidable liens	+	\$43,617.07
Debtor's claimed exemption in Property	+	\$340,000.00
<i>Sum</i>	=	\$394,316.49
Debtor's claimed value of interest absent liens	-	\$210,500.00
Extent lien impairs exemption	=	\$183,816.49

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); accord. *Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); cf. *Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third parties, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property		\$210,500.00
Total amount of unavoidable liens	-	\$43,617.07
Homestead exemption	-	\$340,000.00
Remaining equity for judicial liens	=	(\$173,117.07)
Creditor's judicial lien	-	\$10,699.42
Extent Debtor's exemption impaired	=	(\$183,816.49)

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall state that Creditor's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.

11:00 AM

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

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

NAVDIP BADHESHA/MV
MATTHEW RESNIK/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING

2. [23-10794](#)-B-7 **IN RE: HOMERO MENDIOLA**
[23-1028](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-10-2023 [[1](#)]

EDMONDS V. MENDIOLA
ANTHONY JOHNSTON/ATTY. FOR PL.

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

DISPOSITION: Continued to November 15, 2023, at 11:00 am.

ORDER: The court will issue the order.

The court has reviewed Plaintiff's Status Report filed August 25, 2023 (Doc. # 11). Plaintiff's counsel states that an agreement in principle has been reached whereby the Defendant will pay an unspecified sum to the Trustee so "the estate becomes solvent." *Id.* Counsel requests a continuance of the Status Conference to a date after November 1, 2023, so the extent of claims that will be timely filed are known and a settlement agreement finalized.

The status conference will be continued to November 15, 2023, at 11:00 am. Plaintiff to file and serve a status report on or before November 8, 2023.