



UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, September 25, 2024  
Department A - Courtroom #11  
Fresno, California

---

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (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 or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/CourtAppearances>. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including "screen shots" 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.

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

1. [22-10416](#)-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**  
[WJH-17](#)

MOTION TO MODIFY CHAPTER 11 PLAN AND/OR MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CITIZENS BUSINESS BANK  
8-13-2024 [[459](#)]

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied without prejudice in part.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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). Therefore, the defaults of the non-responding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here with respect to modification of the debtor's confirmed plan.

KR Citrus, Inc. ("Debtor"), the chapter 11 debtor, moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019 approving the compromise of certain claims and disputes between Debtor and Citizens Business Bank ("Creditor"). Doc. #459. Debtor also moves, pursuant to 11 U.S.C. 1193(b), for modification of its Second Amended Subchapter V Plan Dated as of May 31, 2022, as modified on March 10, 2023 (collectively, the "Plan"), and confirmed on March 30, 2023. Doc. ##353, 406, 423.

#### Compromise Agreement

In 2016, Creditor made a loan to Sunburst Packing, LLC ("Sunburst") that was guaranteed by Debtor and Debtor's shareholders. Doc. #459. The guarantee was secured by a deed of trust on Debtor's real property located at 180 South E Street, Porterville, California (the "Property"). Id. Subsequently, Sunburst defaulted on paying the loan, and Creditor sued Sunburst and Debtor's shareholders in the amount of \$579,119.35. Id. This court then entered an order permitting Creditor to foreclose on the Property notwithstanding the automatic stay. Order, Doc. #458. Debtor, Debtor's shareholders, Sunburst and Creditor have negotiated a resolution of all disputes among and between them. Doc. #459.

The terms of the compromise agreement are as follows: (1) the automatic stay previously granted to Creditor will be vacated; (2) Debtor's shareholders will pay Creditor \$30,000.00; (3) mutual releases under California Civil Code § 1542 will be given; and (4) Debtor's Plan will be modified to give a release of claims to Creditor as well as authorize Debtor to enter into the compromise. Doc. #459; Decl. of James W. Reed, Doc. #461.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Debtor has considered the standards of A & C Properties and Woodson. Doc. #463. The probability of success in the litigation is low because Debtor believes the dispute raises questions of law and fact with no guarantee of a favorable ruling. Id. Debtor believes that difficulties will be encountered in connection with collection on the underlying claims and that continued litigation would reduce resources of the estate with no promise of a beneficial result to the estate. Reed Decl., Doc. #461. Debtor asserts the settlement is in the best interest of Debtor, Creditor, and the estate. Id. The court concludes that the A & C Properties factors balance in favor of approving the compromise, and the compromise is in the best interest of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is reasonable. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, Debtor's request for the court to authorize the compromise is GRANTED, and the settlement is approved.

#### Plan Modification

Debtor's motion seeks to modify the Plan pursuant to 11 U.S.C. § 1193(b) to permit Debtor to enter into the compromise with Creditor, including the release of claims. Doc. #459. However, the Plan was confirmed under § 1191(b), so modification of the Plan is governed by § 1193(c). Pursuant to § 1193(c), the debtor may modify the plan at any time within three years of confirmation of the plan, or such longer time as fixed by the court not to exceed five years, but may not modify the plan if the plan, as modified, fails to meet the requirements of § 1191(b). The plan, as modified under § 1193(c), becomes the plan only if circumstances warrant the modification and the court, after notice and a hearing, confirms the plan as modified under § 1191(b).

Here, Debtor seeks authority to modify the Plan to allow Debtor to enter into the compromise with Creditor, including the release of claims. Doc. #463. However, neither the motion nor any of the supporting papers explain how the confirmed plan is to be modified or the new language that will constitute the modified plan. Moreover, neither the motion nor any of the supporting papers set forth how the modified plan meets the confirmation requirements under 11 U.S.C. § 1191(b). Accordingly, the motion to modify the Plan is denied without prejudice for lack of specificity and evidence.

#### Conclusion

Accordingly, the motion will be GRANTED IN PART and DENIED IN PART. The settlement between Debtor, Debtor's shareholders, Sunburst and Creditor will be approved. Debtor will be authorized, but not required, to execute any and all

documents necessary to satisfy the terms of the proposed settlement. Debtor's request to modify its confirmed Plan will be DENIED WITHOUT PREJUDICE.

2. [22-12016](#)-A-11     **IN RE: FUTURE VALUE CONSTRUCTION, INC.**  
[MBR-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-27-2023    [[62](#)]

JAYCO PREMIUM FINANCE OF CALIFORNIA, INC./MV  
D. GARDNER/ATTY. FOR DBT.  
MARSHALL HOGAN/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

3. [24-11422](#)-A-12     **IN RE: IGNACIO/CASAMIRA SANCHEZ**  
[FW-8](#)

MOTION TO SELL AND/OR MOTION TO PAY  
8-28-2024    [[67](#)]

CASAMIRA SANCHEZ/MV  
PETER FEAR/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:        This matter will proceed as scheduled for higher and better offers.

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 the hearing.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Creditors Alan R. Asdoorian and Lora Asdoorian (together, "Creditor") timely filed a written response on September 11, 2024. Doc. #94. The failure of other creditors, 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). Therefore, the defaults of the non-responding parties in interest are entered. This matter will proceed as scheduled for higher and better offers.

Ignacio Sanchez and Casamira Ada Sanchez (together, "Debtors") move the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of 35.63 acres of farmland situated in unincorporated Kingsburg, Kings County, APN 002-040-111-000, including trees, vines and outbuildings (together, the "Property"), to Irigoyen Farms, Inc. ("Buyer") for the purchase price of \$925,000.00, subject to higher and better bids at the hearing. Doc. #67. Debtors also seek authorization to pay a broker commission of 4% to broker, Jim Merlo Real Estate ("Broker), who represents both Buyer and Debtors. Id.

//

Selling Property of Estate under 11 U.S.C. §§ 363(b) and 1206 Permitted

Pursuant to 11 U.S.C. §§ 363(b)(1), 1203 and 1206, a chapter 12 debtor-in-possession, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C.

§ 363(b)(1). The debtor in possession proposing a sale under § 363(b) must demonstrate a valid business justification for the sale and that the sale is proposed in good faith. 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996). "Good faith encompasses fair value, and further speaks to the integrity of the transaction." Id. (quoting In re Wilde Horse Enters., Inc. 136 B.R. 830, 842 (Bankr. C.D. Cal. 1991)). To make such a determination, "the court and creditors must be provided with sufficient information to allow them to take a position on the proposed sale." Wilde Horse Enters., 136 B.R. at 842.

Debtors believe that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Doc. #67. An estimated seller's statement has yet to be provided, but the outstanding encumbrances on the Property are less than the amount Debtors anticipate to receive from the proposed sale. Decl. of Casamira Ada Sanchez, Doc. #69. Therefore, Debtors believe they will have sufficient funds from the sale proceeds to pay the primary deed of trust in full. Id.

The Property was marketed by Broker since before this bankruptcy case was filed, and a contract with a previous buyer was signed pre-petition. Decl. of Jim Merlo, Doc. #70. However, the previous offer to purchase the Property, which had been approved by the court, has since fallen through. Id.; Order, Doc. #49. The terms of the current contract are as follows: (1) escrow to close 7 days after acceptance of the offer; and (2) initial deposit to be in the amount of \$5,000.00. Id.; Sanchez Decl., Doc. #69. The contract is conditioned upon approval by the bankruptcy court and subject to better and higher offers at the hearing. Id.

In Creditor's opposition, Creditor brings to the court's attention that the value of the Property has significantly declined from the first proposed sale in June 2024 at \$1,050,000.00 compared to the current proposed sale at \$925,000.00. Doc. #94. Creditor also brings up concerns about Debtors' farming practices. Id. Despite these concerns raised, Creditor does not oppose this motion. Id.

It appears that the sale of the estate's interest in the Property is in the best interests of the estate, the Property will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith. It is anticipated that the proposed sale will pay secured claims on the Property in full.

Accordingly, subject to overbid offers made at the hearing, the court will GRANT Debtors' motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b)(1). The motion does not specifically request, nor will the court authorize, the sale free and clear of any liens or interests. Debtors indicate that they anticipate all secured claims against the Property will be paid in full through escrow.

Compensation to Broker

Debtors also seek authorization to pay Broker a 4% commission for the sale of the Property. Merlo Decl., Doc. #70; Sanchez Decl., Doc. #69. The court has authorized Broker to be employed by Debtors. Doc. #90. Broker represents both Buyer and Debtors in this transaction. Therefore, Broker seeks a real estate

commission in an amount equal to 2% for Buyer and 2% for Debtors. Id. The court finds the compensation sought is reasonable, actual, and necessary.

### Conclusion

Accordingly, subject to overbid offers made at the hearing, the court will GRANT Debtors' motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b)(1). Debtors will be authorized to pay a 4% commission to Broker as set forth in the motion.

4. [22-11226](#)-A-11 **IN RE: ALVARENGA TRANSPORT, LLC**  
[FW-16](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKINS DROLSHAGEN & CZESHINSKI, LLP FOR JAMES H. WILKINS, SPECIAL COUNSEL(S)  
8-27-2024 [214]

PETER FEAR/ATTY. FOR DBT.  
JAMES WILKINS/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.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Wilkins Drolshagen & Czeshinski, LLP ("Movant"), special counsel for debtor and debtor in possession Alvarenga Transport, LLC ("DIP"), requests allowance of final compensation for services rendered from November 18, 2022 through March 31, 2024. Doc. #214. Movant provided services valued at \$12,462.50 and requests compensation in that amount. Doc. #214; Decl. of James Wilkins, Doc. #216. Movant does not request reimbursement for any expenses. Doc. #214. This is Movant's first and final fee application. DIP consents to the amount requested in Movant's application. Doc. #217.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). 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, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) preparing employment application; (2) assisting in defending DIP against a state court lawsuit involving a motor vehicle accident; (3) participating in successful mediation of the state court lawsuit; (4) preparing and finalizing the terms of a settlement agreement with respect to the lawsuit; and (5) communicating with general bankruptcy counsel. Wilkins Decl., Doc. #216; Ex. B, Doc. #218. The court finds the compensation sought is reasonable, actual, and necessary.

This motion is GRANTED. The court allows compensation on a final basis in the amount of \$12,462.50 to be paid in a manner consistent with the terms of DIP's confirmed plan.

5. [24-11545](#)-A-11 **IN RE: RIDGELINE CAPITAL INVESTMENTS, LLC**  
[MJB-5](#)

MOTION TO EMPLOY ALLISON JAMES ESTATES AND HOMES AS BROKER(S)  
8-29-2024 [[88](#)]

RIDGELINE CAPITAL INVESTMENTS, LLC/MV  
MICHAEL BERGER/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on September 12, 2024. Doc. #111.

6. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**  
[MHW-2](#)

CONTINUED MOTION TO COMPEL  
7-24-2024 [[160](#)]

LA HACIENDA MOBILE ESTATES, LLC/MV  
GREGORY TAYLOR/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

This motion was continued to permit the debtor to review and respond to the verified statement filed by California Rural Legal Assistance, Inc. under Federal Rule of Bankruptcy Procedure 2019 ("Statement") Doc. #235. Pursuant to the response to the Statement filed by the debtor and based on the reasons stated on the record at the prior hearing held on August 21, 2024, the court deems the Statement to be sufficient. The motion to compel is denied because the court deems the Statement to be sufficient. The hearing is vacated.



7. [23-10571](#)-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**  
[FW-2](#)

FURTHER HEARING RE: MOTION TO USE CASH COLLATERAL  
3-24-2023 [[6](#)]

NABIEKIM ENTERPRISES, INC./MV  
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

This motion is moot because the debtor's chapter 11 plan was confirmed on August 26, 2024. Doc. #280.

8. [22-10778](#)-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**  
[UST-1](#)

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7  
MOTION TO DISMISS CASE  
6-21-2024 [[471](#)]

TRACY DAVIS/MV  
NOEL KNIGHT/ATTY. FOR DBT.  
JASON BLUMBERG/ATTY. FOR MV.

NO RULING.

9. [23-12784](#)-A-11 **IN RE: KODIAK TRUCKING INC.**  
[FW-2](#)

FURTHER HEARING RE: MOTION TO USE CASH COLLATERAL  
12-15-2023 [[7](#)]

KODIAK TRUCKING INC./MV  
PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on an interim basis through March 31, 2025.

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

This motion was set for hearing on September 25, 2024 pursuant to the initial motion papers and a third interim order authorizing use of cash collateral ("Interim Order"). Doc. #212. The hearing was set on at least 14 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 4001(b)(2) and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. The Interim Order provided that the debtor may file and serve any

supplemental documents, which may include a revised budget, on or before September 11, 2024. Id.

On September 11, 2024, the debtor filed a supplemental document and revised budget. Doc. #340, 341. Because the request authorizing final use of cash collateral through March 31, 2025 was set on less than 28 days' notice prior to the hearing date, opposition to the continued use of cash collateral may be raised at the hearing. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant continued use of cash collateral on a final basis through March 31, 2025. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper. The court will issue an order if a further hearing is necessary.

Kodiak Trucking, Inc. ("Debtor" or "DIP"), the chapter 11 debtor and debtor-in-possession, moves the court for an order authorizing DIP to use the cash collateral of: (i) Triple E Trucking, LLC; (ii) U.S. Small Business Administration; (iii) Corporation Service Company, as representative for one or more unknown entities; (iv) EC Master Trust; (v) eCapital Freight Factoring Corp.; (vi) California Employment Development Department; (vii) Mint Business Capital; (viii) Vivian Capital Group, and (ix) the Internal Revenue Service (collectively, "Secured Creditors") through March 31, 2025 on a monthly basis subject to a budget. Motion, Doc. #7; Notice, Doc. #339. DIP seeks court authorization to use cash collateral to pay expenses incurred by DIP in the normal course of its business that provides construction trucking services, primarily for highway construction. As adequate protection for DIP's use of cash collateral, DIP will grant a replacement lien against its post-petition accounts receivable for the Secured Creditors with valid liens to the extent cash collateral is actually used. Motion, Doc. #7.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166 (E.D. Cal. 1989) (citing 11 U.S.C. § 363(e)). Bankruptcy Code section 361(1) states that adequate protection may be provided by "requiring the [debtor in possession] to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property." 11 U.S.C. § 361(1). Pursuant to 11 U.S.C. § 363(p), DIP carries the burden of proof on the issue of adequate protection.

The court finds DIP has met its burden of showing that Secured Creditors are adequately protected for DIP's use of their cash collateral by the proposed replacement liens. Ex. A, Doc. #341. Moreover, DIP needs to use the cash collateral to continue its post-petition business operations. Decl. of Marco Arambula, Doc. #340.

Accordingly, pending any opposition at the hearing, the court is inclined to GRANT DIP's request to use cash collateral on an interim basis through March 31, 2025 on the terms set forth in the motion and consistent with the budget attached as Exhibit A to Doc. #341. At the hearing, counsel for DIP should be prepared to set a new hearing date for the further use of cash collateral and a date to file and serve supplemental pleadings in case Debtor's chapter 11 plan is not confirmed by March 31, 2025.

10. [24-12295](#)-A-11    **IN RE: BURT ELECTRIC & COMMUNICATIONS, INC.**  
[YW-3](#)

CONTINUED MOTION TO VALUE COLLATERAL OF KAPITUS, LLC  
8-14-2024    [[31](#)]

BURT ELECTRIC & COMMUNICATIONS, INC./MV  
LEONARD WELSH/ATTY. FOR DBT.  
CONTINUED TO 10/30/2024 PER ORDER DOC. NO. 64

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

DISPOSITION:    Continued to October 30, 2024 at 9:30 a.m.

NO ORDER REQUIRED.

On September 10, 2024, the court issued an order continuing the hearing on the motion to value collateral to October 30, 2024 at 9:30 a.m. Doc. #64.

1. [24-12000](#)-A-7     **IN RE: JOSHUA MITCHELL**  
[JRL-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.  
8-16-2024    [[12](#)]

JOSHUA MITCHELL/MV  
JERRY LOWE/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. The court will issue an order after the hearing.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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). Therefore, the defaults of the non-responding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

Joshua David Mitchell ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Capital Collections, LLC ("Creditor") on the residential real property commonly referred to as 2808 Cherry Avenue, Sanger, California 93657 (the "Property"). Doc. #12; Schedule C & D, Doc. #1.

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

Debtor filed the bankruptcy petition on July 18, 2024. Doc. #1. A judgment was entered against Joshua D. Mitchell in the amount of \$4,199.35 in favor of Creditor on April 26, 2016. Ex. A, Doc. #15. The abstract of judgment was recorded pre-petition in Fresno County on May 23, 2016, as document number 2016-0065094. Ex. A, Doc. #15. The lien attached to Debtor's interest in the Property located in Fresno County. Doc. #12. The Property also is encumbered by a mortgage in favor of Gregory Funding in the amount of \$147,608.00. Schedule D, Doc. #1; Doc. #12. Debtor claimed an exemption of \$350,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$400,000.00. Schedule A/B, Doc. #1.

While not included in the motion, according to Debtor's Schedule D, the Property also is encumbered by a judicial lien in favor of Fresno First Bank in the amount \$109,645.00; a judicial lien in favor of American Contractors in the amount of \$28,500.00; a judicial lien in favor of Portfolio in the amount of \$2,424.00; a judicial lien in favor of Dowling Aaron Incorporated in the amount of \$9,609.00; and a judicial lien in favor of Koch, Degn & Gomez in the amount of \$2,229.00. Schedule D, Doc. #1; Doc. #12.

When determining whether a judicial lien is subject to avoidance under 11 U.S.C. § 522(f)(1), 11 U.S.C. § 522(f)(2)(A)(ii) requires the court to consider all other liens on the property, which the motion does not do. Doc. #12. While it may be the case that the court does not need to consider junior judicial liens in determining whether Creditor's judicial lien should be avoided, the judicial liens listed in Debtor's Schedule D do not include the dates on which the abstracts of judgment were recorded, so the court does not know which of the judicial liens listed on Schedule D, if any, should be included in the avoidance analysis for Creditor's lien. Schedule D, Doc. #1. Because it is unclear whether the other judicial liens listed on Debtor's Schedule D are senior or junior to the judicial lien of Creditor and the motion does not include the necessary information for the court to determine such, the court is unable to make the proper calculation to rule on this motion.

Accordingly, this motion will be DENIED.

2. [24-11803](#)-A-7 **IN RE: SONJA JACKSON**

NOTICE OF HEARING AND OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
8-6-2024 [[13](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtor shall attend the meeting of creditors rescheduled for October 9, 2024 at 3:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Federal Rules of Bankruptcy Procedure 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or file motions for abuse, other than presumed abuse, under 11 U.S.C. § 707, is extended to 60 days after the conclusion of the meeting of creditors.

3. [22-11505](#)-A-7     **IN RE: MANUEL GONZALES**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION/APPLICATION TO CONFIRM  
TERMINATION OR ABSENCE OF STAY FILED BY CREDITOR AMERICREDIT FINANCIAL  
SERVICES, INC.  
8-20-2024    [20]

AMERICREDIT FINANCIAL SERVICES, INC./MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.  
DISCHARGED 12/12/2022

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

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

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on December 12, 2022. Doc. #18. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Americredit Financial Services, Inc. DBA GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2017 Chevrolet Impala, VIN: 1G1105S39HU187521 ("Vehicle"). Doc. #20.

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 review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least six complete post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$2,091.52. Decl. of Phillip Ford, Doc. #22.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least six post-petition payments to Movant and the Vehicle is a depreciating asset.

4. [24-12111](#)-A-7     **IN RE: ARMANDO SANCHEZ**  
[TCS-1](#)

MOTION TO AVOID LIEN OF CREDIT CONSULTING SERVICES, INC.  
8-22-2024    [[10](#)]

ARMANDO SANCHEZ/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION:        Denied without prejudice.

ORDER:                The court will issue an order.

Federal Rule of Bankruptcy Procedure ("Rule") 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) to be served "in the manner provided for service of a summons and complaint by Rule 7004." Service of the motion on Credit Consulting Services, Inc. ("Creditor") does not satisfy Rule 7004.

Rule 7004(b)(3) provides that service upon a domestic corporation be mailed "to the attention of an officer, managing or general agent, or to any other agent authorized by appointment or law to receive service of process[.]" Fed. R. Bankr. P. 7004(b)(3). The certificate of service filed in connection with this motion does not show that Creditor, which is a corporation, was served to the attention of anyone. See Doc. #14. Moreover, service of the notice of hearing and moving papers on Creditor's counsel that filed the abstract of judgment does not satisfy Rule 7004. Doc. #14. A review of the docket shows no attorney has appeared on behalf of Creditor in this bankruptcy case. Based on the pleadings filed with this court, Creditor was not served properly with this motion pursuant to Rule 7004(b)(3).

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

5. [15-14425](#)-A-7     **IN RE: DAVID/DEBBIE GUTIERREZ**  
[DMG-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT AND/OR  
MOTION FOR COMPENSATION BY THE LAW OFFICE OF DONAHOO & ASSOCIATES, P.C.  
FOR RICHARD DONAHOO, SPECIAL COUNSEL(S)  
8-20-2024   [49]

JEFFREY VETTER/MV  
R. BELL/ATTY. FOR DBT.  
RICHARD DONAHOO/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.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of David Gutierrez, Sr. and Debbie Sue Gutierrez (collectively, "Debtors"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of the split of the estate's interest in a back wage claim held by Debtors against CJ Holding Co. ("Defendant"). Doc. #49. Richard Donahoo ("Special Counsel") was previously authorized to represent Trustee with respect to all claims held by Debtors against Defendant. See Order, Doc. #36. Trustee also requests authorization of final compensation for Special Counsel pursuant to 11 U.S.C. § 330(a) as required by the order employing special Counsel. Doc. #49; Order, Doc. #36.

#### Settlement Agreement

Among the assets of the estate is a judgment against Defendant awarding back wages to debtor David Gutierrez. Ex. A, Doc. #53. The judgment awards Mr. Gutierrez the following amounts: (1) wages in the amount of \$148,245.75; (2) statutory interest in the amount of \$106,303.00 and continuing in the amount of \$40.62 per day from June 11, 2021; (3) attorneys' fees in the amount of \$315,516.00 and costs in the amount of \$11,516.00 awarded by the arbitrator; and (4) additional post-arbitration attorneys' fees in the amount of \$8,250.00 and \$400 in costs. Id. After the judgment was entered, there was a dispute as to whether Mr. Gutierrez and other claimants were entitled to post-petition interest in their final judgments, which led to a meet and confer between parties to reconcile the liquidated claims and to determine the amount of each



individual claimants' allowed claims. Decl. of Richard Donahoo, Doc. #54. This resulted in a stipulation that determined Mr. Gutierrez's allowed liquidate claim in the amount of \$529,416.39, which is comprised of \$193,734.39 in unpaid wages with interest and \$335,682.00 in attorney's fees and costs. Id.

Prior to the determination of Mr. Gutierrez' claim against Defendant, Defendant filed a chapter 11 bankruptcy case in the Southern District of Texas. Donahoo Decl., Doc. #54. Defendant confirmed a chapter 11 plan that became effective on January 6, 2017, and provides for payment of Debtors' claim against Defendant. Id. To date, the funds received by Special Counsel and maintained in the firm's client trust account with respect to Debtors' claims against Defendant consists of \$170,486.26, representing 88% of the unpaid wages with interest awarded, and \$295,400.16, representing 88% of the attorneys' fees and costs awarded. Id. Further, Special Counsel received a letter from the Unsecured Claims Representative with respect to Defendant's confirmed plan stating that the payment received is the "expected final distribution," and the Unsecured Claims Representative does not expect to receive additional funds. Ex. C, Doc. #53.

By this motion, Trustee seeks court approval as to the split of the estate's interest in Mr. Gutierrez's awarded back wage claim of \$170,486.26 in which Mr. Gutierrez is able to exempt 75% of the claim pursuant to California Code of Civil Procedure § 704.070. Decl. of Jeffrey M. Vetter, Doc. #52. Trustee believes the estate is entitled to the sum of \$42,621.54. Id.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #52. Trustee believes the probability of success is low because Trustee believes that 25% recovery is the best that the bankruptcy estate can receive from Debtors' wage claims against Defendant based on the exemption laws, which are favorable to Debtors. Vetter Decl., Doc. #52. Trustee believes that the difficulty of collection and difficulty of litigation are not factors here because the funds paid to the estate are on hand and the issues have already been litigated. Id. Lastly, Trustee believes that the settlement serves in the interest of creditors because the proposed settlement obtains a sum certain for the estate without the expenditure of additional attorney fees that would be paid out as an administrative expense. Id. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, Trustee's request to authorize the compromise is GRANTED, and the settlement is approved.

//

Final Compensation

Trustee also requests confirmation of final compensation and reimbursement for expenses payable to Special Counsel for services rendered in connection with Debtors' claims against Defendant. Doc. #49. Through the stipulated order, Special Counsel was awarded \$335,682.00 in attorneys' fees and costs. Ex. B, Doc. #53. Special Counsel has received funds in the amount of \$295,400.16 representing 88% of the attorneys' fees and costs awarded and has maintained these funds in the firm's client trust account. Id. As stated above, Special Counsel received a letter from the Unsecured Claims Representative stating that the payment received under Defendant's plan is the "expected final distribution," and the Unsecured Claims Representative does not expect to distribute any additional funds. Ex. C, Doc. #53.

The trustee may, with the court's approval, employ a professional person on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

Here, the court previously authorized the employment of Special Counsel expressly under 11 U.S.C. §§ 327(e) and 328. Order, Doc. #36. Trustee was authorized to employ Special Counsel as of January 25, 2021 and any compensation or expense reimbursement is subject to approval by the court under § 330(a) and/or § 331. Order, Doc. #36; Doc. #49.

Trustee is authorized to pay Special Counsel in a manner consistent with Trustee's motion and the court's Order Granting Trustee's Motion for Order Authorizing Employment of Special Counsel to the Estate Pursuant to 11 U.S.C. § 328(a), Doc. #33.

Accordingly, Trustee's motion is GRANTED. The settlement is approved, Trustee is authorized to enter into, execute, and deliver any releases and other documents as may be required to effectuate the settlement, and Trustee is authorized to receive the sum of \$42,621.54 as required by the settlement. In addition, payment to Special Counsel in the amount of \$295,400.16 is authorized.

6. [24-11536](#)-A-7 **IN RE: ATILANO CHAVEZ DEL RIO**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-23-2024 [[14](#)]

GLOBAL LENDING SERVICES LLC/MV  
R. BELL/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/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.

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Global Lending Services LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2021 Nissan Versa, VIN: 3N1CN8BV3ML896652 ("Vehicle"). Doc. #14.

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 review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$1,010.37. Decl. of Shelby Wallace, Doc. #16. Movant also shows the collateral is a depreciating asset and there is lack of insurance. Id. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least three pre- and post-petition payments to Movant, there is a lack of insurance, and the Vehicle is a depreciating asset.

7. [23-11240](#)-A-7 **IN RE: PEER SERVICES INC.**  
[FW-3](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
8-28-2024 [[47](#)]

PETER FEAR/MV  
HAGOP BEDOYAN/ATTY. FOR DBT.  
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Peer Services, Inc., moves the court for an order authorizing the payment of \$848.00 to the Internal Revenue Service for estimated state tax due along with any additional fees or penalties accessed by the taxing authorities. Doc. #47; Decl. of Peter L. Fear, Doc. #49.

11 U.S.C. § 503(b)(1)(B) states that, after notice and a hearing, administrative expenses shall be allowed for "any tax [] incurred by the estate, whether secured or unsecured, including property taxes . . . except a tax of a kind specified in section 507(a)(8) of this title[.]" "Pursuant to this subsection of § 503, a claim is entitled to allowance as an administrative expense if two requirements are satisfied: the tax must be incurred by the estate and the tax must not be a tax of a kind specified in § 507[(a)(8)]." Towers for Pacific-Atlantic Trading Co. v. United States (In re Pacific-Atlantic Trading Co.), 64 F.3d 1292, 1298 (9th Cir. 1995). Here, Trustee has shown that the tax was incurred by the estate, and the tax is not a tax of the kind specified in § 507(a)(8). Fear Decl., Doc. #49.

Accordingly, this motion is GRANTED. The estate is authorized to pay \$848.00 to the Internal Revenue Service as administrative expense claims.

8. [17-10743](#)-A-7     **IN RE: RUPERTO MARTINEZ**  
[ALG-3](#)

MOTION TO AVOID LIEN OF COLLECT ACCESS, LLC  
8-19-2024     [\[46\]](#)

RUPERTO MARTINEZ/MV  
JANINE ESQUIVEL/ATTY. FOR DBT.  
JANINE ESQUIVEL OJI/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                     Continue and set for an evidentiary hearing over disputed valuation.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On September 11, 2024, Collect Access, LLC ("Creditor") filed timely written opposition opposing the valuation of the property asserted by the debtor. Doc. #51. The failure of other creditors, 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). Therefore, the defaults of the non-responding parties in interest are entered.

Ruperto Martinez ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Creditor on the residential real property commonly referred to as 2107 Riverview Drive, Madera, California 93637 (the "Property"). Doc. #46; Am. Schedule D, Doc. #27; Am. Schedule C, Doc. #41.

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

Debtor filed his bankruptcy petition on March 2, 2017. A judgment was entered against Debtor in the amount of \$41,528.95 in favor of Creditor on September 26, 2006 and renewed on May 20, 2016. Ex. F, Doc. #49. A renewal of judgment was recorded in Madera County on November 20, 2016, as document number 2016030414. Ex. F, Doc. #49. The lien attached to Debtor's interest in the Property located in Madera County. Id. Debtor asserts a market value for the Property as of the petition date at \$234,157.48. Am. Schedule A/B, Doc. #27; Decl. of Ruperto Martinez, Doc. #48. The Property also is encumbered by a first deed of trust in favor of US Bank Home Mortgage in the amount \$193,154.00. Am. Schedule D, Doc. #27. Debtor claimed an exemption of \$75,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #41.

Debtor's amended schedules reflect that Debtor includes the cost of a hypothetical sale to reduce the apparent value of his interest in the Property. In Amended Schedule A/B, Debtor asserts a fair market value for the Property of \$254,519.00 but deducted an estimated 8% costs of a hypothetical sale leaving the value of his interest in the Property at \$234,157.48 on his Schedules and for this motion. Am. Schedule A/B, Doc. #27; Doc. #46.

However, this approach is contrary to In re Aslanyan, which this court finds persuasive and follows, in which Judge McManus held "[l]iquidation costs or closing costs are not deducted from market value in the context of a motion to avoid a judicial lien." No. 17-24195, 2017 Bankr. LEXIS 4363, at \*4 (Bankr. E.D. Cal. Dec. 20, 2017); In re Wolmer, 494 B.R. 783, 784 (Bankr. D. Conn. 2013); In re Barrett, 370 B.R. 1, 3 (Bankr. D. Me. 2007) ("[A] bevy of courts have opted against including hypothetical sales costs and other transaction costs in the valuation of collateral for the purpose of determining the fate of a judicial lien."); In re Sheth, 225 B.R. 913, 918-19 (Bankr. N.D. Ill. 1998); In re Sumerell, 194 B.R. 818, 827 (Bankr. E.D. Tenn. 1996); In re Abrahamzadeh, 162 B.R. 676, 678 (Bankr. N.J. 1994); In re Yackel, 114 B.R. 349, 351 (Bankr. N.D.N.Y. 1990). "When the bankruptcy court determines a debtor's exemption rights in property, 11 U.S.C. § 522(a)(2) directs it to value property at 'market value as of the date of the filing of the petition . . . .' There is no provision in section 522(a)(2) or in the statutory formula in

section 522(f) (2) (A) mandating that a debtor's likely costs of sale be taken into account when ascertaining market value." Aslanyan, 2017 Bankr. LEXIS 4363, at \*4.

In support of its opposition, Creditor filed the appraisal of the Property by Brian J. Spear that values the Property at \$290,000 as of July 31, 2017. Decl. of Brian J. Spear, Doc. #53; Ex. A, Doc. #54. However, for purposes of 11 U.S.C. § 522, "'value' means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate." 11 U.S.C. § 522(a) (2). Here, it appears the Property was property of the estate as of the petition date, March 2, 2017, so it is unclear to the court why Creditor submitted an appraisal that appraises the Property as of July 31, 2017. In any event, it appears there is a dispute regarding the value of the Property for purposes of the lien avoidance motion, and that disputed material factual issue must be resolved before the relief requested in the motion can be granted or denied. The court is inclined set an evidentiary hearing on this motion.

9. [24-10543](#)-A-7 **IN RE: MICHAEL RAZO AND ANA APOLONG**  
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-20-2024 [[31](#)]

NATIONS LENDING CORPORATION/MV  
STEPHEN LABIAK/ATTY. FOR DBT.  
CASSANDRA RICHEY/ATTY. FOR MV.  
DISCHARGED: 06/17/2024

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

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

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f) (1). The failure of 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 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest pursuant to 11 U.S.C. § 362(c) (2) (C). The debtors' discharge was entered on June 17, 2024. Doc. #25. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Nations Lending Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a piece of real property located at 525 S. Latimer St., Tulare, CA 93274 (the "Property"). Doc. #31.

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 review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have been in default since April 1, 2024. Decl. of Linda Brown, Doc. #34. Further, there does not appear to be any equity in the Property for the bankruptcy estate after consideration of the fair market value of the Property, Movant's lien and the debtors' claimed exemption in the Property. Id.

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least 4 post-petition payments to Movant.

10. [24-11765](#)-A-7 **IN RE: RAUL MARTINEZ HUERTA AND NAYELI MARTINEZ GARCIA**

NOTICE OF HEARING AND OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
8-6-2024 [\[13\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is **CONDITIONALLY DENIED**.

The debtors shall attend the meeting of creditors rescheduled for October 9, 2024 at 3:00 p.m. If the debtors fail to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Federal Rules of Bankruptcy Procedure 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under 11 U.S.C. § 707, is extended to 60 days after the conclusion of the meeting of creditors.

11. [24-11891](#)-A-7    **IN RE: DUNCAN CHAVEZ AND SELENA MENZIE**  
[LR-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-17-2024    [\[56\]](#)

DALE E. FOWLER AS TRUSTEE OF  
THE D AND S FOWLER REVOCABLE  
LARRY ROTHMAN/ATTY. FOR MV.  
OST 9/18/24

NO RULING.



2:00 PM

1. [24-12006](#)-A-13     **IN RE: JANET MOBLEY-HAYES**  
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG  
9-9-2024    [[13](#)]

LILIAN TSANG/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING  
WITHDRAWN

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

DISPOSITION:     Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection on September 16, 2024. Doc. #21.

2. [23-11411](#)-A-13     **IN RE: JASON/DANIELLE PETERSON**  
[SL-4](#)

MOTION TO APPROVE LOAN MODIFICATION  
8-22-2024    [[69](#)]

DANIELLE PETERSON/MV  
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

Jason Andrew Peterson and Danielle Lynn Peterson (collectively, "Debtors"), the chapter 13 debtors in this case, move the court for an order authorizing

Debtors to modify their existing mortgage. Doc. #69. Debtors seek to modify the mortgage on their primary residence located at 1803 N. Silvervale Street, Visalia, California 93291 ("Residence"). Id. Debtors suffered a series of unexpected major expenses from December 2023 through February 2024, including a high car repair bill and unexpected medical bills, that resulted in Debtors falling three months behind on their mortgage payments to Pennymac Loan Services, LLC ("Creditor") in the aggregate amount of \$6,370.35. Doc. #69; Decl. of Jason Andrew Peterson, Doc. #71. Debtors have negotiated a modification of their mortgage loan in order to become current.

The negotiated terms of the modification of the mortgage loan are as follows:

- (1) The \$6,370.35 in post-petition arrears will be put at the end of the mortgage and will be fully due and payable by December 1, 2050 or earlier if the following events take place:
  - (a) Debtors have paid in full all amounts due under the primary mortgage owed to Creditor;
  - (b) The maturity date of the primary note has been accelerated; or
  - (c) The primary note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary of Housing and Urban Development.
- (2) Creditor will record a second deed of trust against the Residence in the amount of \$6,370.35 to effectuate the agreement; and
- (3) The modification will have the effect of Debtors becoming current in Debtors' post-petition mortgage payments.

Ex. A, Doc. #72; Peterson Decl., Doc. #71.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

It appears that motion was served and noticed properly, and no timely written opposition was filed. There is no indication that Debtors are not current on their chapter 13 plan payments or that the chapter 13 plan is in default. Debtors' Schedules I and J demonstrate an ability to pay future plan payments, projected living expenses, and the modified debt. The modified debt is a single loan incurred only to modify the existing debt encumbering Debtors' Residence. The only security for the modification will be Debtors' Residence.

Accordingly, this motion is GRANTED. Debtors are authorized, but not required, to modify the existing mortgage in a manner consistent with the motion.

3. [24-11612](#)-A-13     **IN RE: CHERYLE HARRISON**  
[JRL-1](#)

AMENDED MOTION TO VALUE COLLATERAL OF SOLARITY CREDIT UNION  
8-26-2024    [[27](#)]

CHERYLE HARRISON/MV  
JERRY LOWE/ATTY. FOR DBT.  
STIPULATION

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

DISPOSITION:     Dropped from calendar

NO ORDER REQUIRED.

On September 24, 2024, the court issued an order approving a stipulation resolving this motion. Doc. #33.

4. [24-11612](#)-A-13     **IN RE: CHERYLE HARRISON**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG  
7-23-2024    [[12](#)]

LILIAN TSANG/MV  
JERRY LOWE/ATTY. FOR DBT.

NO RULING.

5. [24-12116](#)-A-13     **IN RE: MICHAEL/VICTORIA BUTLER**  
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG  
9-10-2024    [[17](#)]

LILIAN TSANG/MV  
BENNY BARCO/ATTY. FOR DBT.

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

DISPOSITION:     Continued to October 31, 2024 at 9:30 a.m.

ORDER:            The court will issue an order.

Michael Anthony Butler, Jr. and Victoria Janelle Butler (collectively, "Debtors") filed a voluntary petition under chapter 13 on July 25, 2024 and a chapter 13 plan ("Plan") on August 3, 2024. Doc. #1, 10. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because: (1) the Plan has not been proposed in good faith because Debtors' Schedule A/B fails to list Debtors' business assets, inventory and/or equipment; (2) Debtors will not be able to make all payments under the Plan and comply with the Plan because Debtors have not filed the appropriate documents; (3) the Plan does not provide for all of Debtors' projected disposable income to be applied to unsecured

creditors under the Plan; and (4) Debtors have not filed all applicable tax returns. Doc. #17.

This objection will be continued to October 31, 2024 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtors shall file and serve a written response no later than October 17, 2024. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtors' position. Trustee shall file and serve a reply, if any, by October 24, 2024.

If Debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than October 24, 2024. If Debtors do not timely file a modified plan or a written response, this objection to confirmation will be denied on the grounds stated in Trustee's objection without a further hearing.

6. [24-12127](#)-A-13 **IN RE: ISAAC PICHE**  
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG  
9-9-2024 [[17](#)]

LILIAN TSANG/MV  
STEVEN ALPERT/ATTY. FOR DBT.

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

DISPOSITION: Continued to October 31, 2024 at 9:30 a.m.

ORDER: The court will issue an order.

Isaac Piche ("Debtor") filed a voluntary petition under chapter 13 as well as a chapter 13 plan ("Plan") on July 26, 2024. Doc. ##1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because Debtor has not filed all applicable tax returns and Debtor's Plan is not feasible. Doc. #17.

This objection will be continued to October 31, 2024 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than October 17, 2024. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Trustee shall file and serve a reply, if any, by October 24, 2024.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than October 24, 2024. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be denied on the grounds stated in Trustee's objection without a further hearing.

MOTION TO VALUE COLLATERAL OF AMERIS BANK  
8-28-2024    [8]

GEMMA CASIANO-NAVARRA/MV  
PETER SAUER/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

Robert Michael Martinez Navarra and Gemma Casiano-Navarra (together, "Debtors"), the debtors in this chapter 13 case, move the court for an order valuing Debtors' HVAC unit ("Property"), which is the collateral of Ameris Bank ("Creditor"). Doc. #8; Decl. of Gemma Casiano-Navarra, Doc. #10.

11 U.S.C. § 1325(a)(\*) (the hanging paragraph) permits the debtor to value personal property other than a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 1-year period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtors have a loan with Creditor secured by the Property in the amount of \$5,140.44. Doc. #8. Creditor's claim was incurred by Debtors more than one year before filing this bankruptcy case. Id.; Casiano-Navarra Decl., Doc. #10. Debtors assert the replacement value of Property is \$500.00 and ask the court for an order valuing the Property at \$500.00. Casiano-Navarra Decl., Doc. #10.

Debtor Gemma Casiano-Navarra has provided a valuation of the HVAC unit in the supporting declaration, and Ms. Casiano-Navarra is competent to testify as to the value of the HVAC unit. Id. Given the absence of contrary evidence, Ms. Casiano-Navarra's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$500.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

8. [24-11328](#)-A-13     **IN RE: HARRY BROUSE**  
[SAH-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEMB LAW GROUP FOR  
SUSAN A. HEMB, DEBTORS ATTORNEY(S)  
8-15-2024    [[19](#)]

SUSAN HEMB/ATTY. FOR DBT.

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

DISPOSITION:        Denied without prejudice.

ORDER:                The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

There are no attachments to the certificates of service on the docket with respect to this motion (Doc. ##24, 25) showing on whom and at what address the motion and notice of motion were served. Therefore, the court cannot determine whether service of the notice and motion complies with Federal Rule of Bankruptcy Procedure ("Rule") 2002, which requires that a motion for compensation must be served on parties in interest at least twenty-one (21) days prior to the hearing. In addition, neither of the certificates of service on the docket respect to this motion (Doc. ##24, 25) are signed as required by Rule 9011(a).

9. [24-10846](#)-A-13     **IN RE: KENNETH MYERS**  
[LGT-1](#)

MOTION TO DISMISS CASE  
8-22-2024    [[41](#)]

LILIAN TSANG/MV  
DAVID JOHNSTON/ATTY. FOR DBT.

TENTATIVE RULING:    This matter will proceed as scheduled.

DISPOSITION:        Continued to November 14, 2024 at 9:30 a.m.

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

On September 11, 2024, the debtor filed a response to the trustee's motion to dismiss as well as a modified plan (DCJ-2, Doc. #49). Doc. #52. A motion to confirm the modified plan is set for hearing on November 14, 2024 at 9:30 a.m. Doc. ##47-51. Accordingly, the court is inclined to continue the hearing on the debtor's objection to the Motion to November 14, 2024 at 9:30 a.m.

10. [24-12052](#)-A-13     **IN RE: PARAMJIT SINGH**  
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG  
9-5-2024    [[23](#)]

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

DISPOSITION:         Continued to October 31, 2024 at 9:30 a.m.

ORDER:                The court will issue an order.

Paramjit Singh ("Debtor") filed a voluntary petition under chapter 13 on July 24, 2024 and a chapter 13 plan ("Plan") on August 2, 2024. Doc. #1, 15. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because (1) the Plan fails to comply with the provisions of chapter 13 and with other applicable provisions, and (2) Debtor will not be able to make all payments under the Plan and comply with the Plan. Doc. #23.

This objection will be continued to October 31, 2024 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than October 17, 2024. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Trustee shall file and serve a reply, if any, by October 24, 2024.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than October 24, 2024. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be denied on the grounds stated in Trustee's objection without a further hearing.

11. [24-11760](#)-A-13     **IN RE: ISAAC TORRES AND MARIA VALADEZ-ROMO**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG  
8-13-2024    [[18](#)]

LILIAN TSANG/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION:         Denied.

ORDER:                The court will issue an order.

Isaac Torres and Maria Guadalupe Valdez-Romo (collectively, "Debtors") filed a voluntary petition under chapter 13 on January 16, 2024 along with a chapter 13 plan ("Plan") on June 26, 2024. Doc. ##1, 3. The chapter 13 trustee ("Trustee") objected to confirmation of the Plan. Doc. #18. The court continued this matter to September 25, 2024 and ordered Debtors to file and serve a written response to Trustee's objection by September 11, 2024; or if Debtors elected to withdraw this Plan, then Debtors had to file, serve, and set for hearing a confirmable modified plan by September 18, 2024. Doc. #21.

Having reviewed the docket in this case, the court finds Debtors have not voluntarily converted this case to chapter 7 or dismissed this case, and Trustee's objection has not been withdrawn. Further, Debtors have not filed and served any written response to Trustee's objection. Debtors have not filed, served, and set for hearing a confirmable modified plan by the time set by the court.

Accordingly, Trustee's objection to the Plan is SUSTAINED on the grounds set forth in Trustee's objection.



3:00 PM

1. [23-11803](#)-A-7     **IN RE: VALERIE RODRIGUEZ**  
[23-1051](#)     [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT  
7-26-2024    [[46](#)]

RODRIGUEZ V. DEPT OF ED EDFINANCIAL ET AL  
RESPONSIVE PLEADING

NO RULING.

2. [22-11226](#)-A-11     **IN RE: ALVARENGA TRANSPORT, LLC**  
[FW-9](#)

CONTINUED PRE-TRIAL CONFERENCE RE: OBJECTION TO CLAIM OF DIANA RAMIREZ  
MUNOZ, CLAIM NUMBER 4  
3-23-2023    [[126](#)]

ALVARENGA TRANSPORT, LLC/MV  
PETER FEAR/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Dropped from calendar

NO ORDER REQUIRED.

Final orders resolving each claim objection and providing the final, allowed amount of each claim have been entered in this bankruptcy case. Doc. ##220-224. Accordingly, this pre-trial conference is dropped from calendar.

3. [23-12328](#)-A-7     **IN RE: RUSTY PITTS**  
[23-1056](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
12-27-2023    [[1](#)]

YOUNG V. PITTS  
KEITH CABLE/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

4. [23-10947](#)-A-13     **IN RE: SONIA LOPEZ**  
[23-1039](#)

RESCHEDULED PRE-TRIAL CONFERENCE RE: COMPLAINT  
9-21-2023    [[1](#)]

LOPEZ V. UNIFIED MORTGAGE SERVICE, INC. ET AL  
SUSAN SILVEIRA/ATTY. FOR PL.  
CONT'D TO 10/31/24 PER ECF ORDER NO. 118

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

DISPOSITION:         Continued to October 31, 2024 at 11:00 a.m.

NO ORDER REQUIRED.

On August 23, 2024, the court issued an order an amended scheduling order continuing the pre-trial conference to October 31, 2024 at 11:00 a.m. Doc. #118.

5. [23-10947](#)-A-13     **IN RE: SONIA LOPEZ**  
[23-1039](#)    [MRB-6](#)

MOTION TO WITHDRAW OR AMEND ADMISSIONS IN REQUEST FOR ADMISSIONS  
8-16-2024    [[112](#)]

LOPEZ V. UNIFIED MORTGAGE SERVICE, INC. ET AL  
EDWARD WEBER/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 court will issue an order after the hearing.

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The plaintiff timely filed and served written non-opposition on September 11, 2024. Doc. #121. This matter will proceed as scheduled.

Sonia Lopez ("Plaintiff") is the plaintiff in this adversary proceeding. Doc. #1. Unified Mortgage Service, Inc.; Capital Benefit Mortgage, Inc.; Brilena, Inc.; Michael and Adele Bumbaca; Equity Trust Company Successor in Interest to First Regional Bank as Custodian FBO Robert Pastor IRA Account #051236; Equity Trust Company as Custodian FBO Charles A. Gurule Jr. IRA Account #T058685; Equity Trust Company Custodian FBO Robert B. Pastor IRA Account #T058686; and Robert C. Edwards (collectively, "Defendants") move to withdraw Defendants' admissions that are deemed admitted under Federal Rule of Civil Procedure ("Rule") 36(b), incorporated into this adversary proceeding by Federal Rule of Bankruptcy Procedure 7036. Doc. #112.

A matter is admitted unless within 30 days after being served with a request for admission, the party to whom the request is directed serves on the requesting party a written answer or objection. Fed. R. Civ. P. 36(a)(3). A

party who fails to respond within 30 days and later tries to withdraw its deemed admissions "must make a strong showing". 999 v. C.I.T. Corp., 776 F.2d 866, 869 (9th Cir. 1985) To determine whether a party may be permitted to withdraw or amend an admission, the court must determine whether the party satisfies two prongs: "First, the withdrawal will aid in presenting the merits of the case. Second, no substantial prejudice to the party who requested the admission will result from allowing the admission to be withdrawn or amended." Fed. R. Civ. P. 36(b); Conlon v. U.S., 474 F.3d 616, 625 (9th Cir. 2007).

On September 1, 2023, Plaintiff filed a complaint against Defendants alleging 18 claims for relief relating to alleged improper excessive charges asserted by Defendants under a note and deed of trust secured by real property located at 819, 819½, 821 and 821½ N. Divisadero Street, Visalia California 93291 ("Complaint"). Doc. #1. Defendants answered the Complaint on October 20, 2023. Doc. #9.

On February 16, 2024, Plaintiff served Defendants with Plaintiff's First Set of Interrogatories and First Set of Requests for Production of Documents. Decl. of Susan D. Silveira at ¶¶ 1-2, Doc. #70; Exs. A-D, Doc. #71. On March 5, 2024, Plaintiff served Defendants with Plaintiff's First Set of Requests for Admissions ("Requests for Admissions"). Silveira Decl. at ¶ 3, Doc. #70; Exs. E-F, Doc. #71.

On March 15, 2024, counsel for Plaintiff received a request from counsel for Defendants for an extension of time to respond to discovery, which was granted until April 5, 2024, the discovery cut-off date in this court's scheduling order. Silveira Decl. at ¶ 5, Doc. #70. On April 5, 2024, counsel for Plaintiff received another request from counsel for Defendants for an extension of time to respond to discovery. Id. at ¶ 6. Counsel for Plaintiff agreed to an additional week subject to counsel for Defendants preparing a stipulation and order extending the discovery deadline. Id. Counsel for Plaintiff did not hear further from counsel for Defendants. Id.

On April 23, 2024, counsel for Plaintiff reached out to counsel for Defendants requesting the status of discovery. Silveira Decl. at ¶ 8, Doc. #70. As of May 22, 2024, counsel for Plaintiff had not heard back from counsel for Defendants. Id. Plaintiff filed a motion for entry of default judgment that was denied except to the extent that the matters in the Requests for Admissions were deemed admitted pursuant to Rule 36(a)(3). Doc. #68; Order, Doc. #88.

Unbeknownst to Movant or the court, Defendants' prior counsel Edward T. Weber was hospitalized on May 22, 2024, and passed away on May 24, 2024. Doc. #115. Subsequently, Michael Brooks entered this case as attorney of record for Defendants. Doc. ##84, 85. The instant motion seeks to withdraw or amend admissions resulting from prior counsel's failure to respond to the Request for Admissions. Doc. #115. Defendants assert that due to Mr. Weber's lack of communication, the parties were unaware that a motion for summary judgment was filed or that there was any cause for concern because Mr. Weber extended a settlement offer that Defendants believed was under consideration. Id. Defendants are prepared to respond to all discovery responses and have drafted proposed responses to the Requests for Admissions. Id.; Ex. 1, Doc. #114. Further, Defendants wish to put on a defense of this matter and believe they will not be able to defend itself against some of the claims made by Plaintiff if the Requests for Admission are deemed conclusive. Doc. #115.

Plaintiff filed a non-opposition to the motion for withdrawal of admissions. Doc. #121. Plaintiff does not oppose allowing Defendants time to provide their responses by a certain date. Id. Plaintiff believes extending the timeline of this case for a few weeks will allow for better trial preparation by both

parties as well as allow the case to be decided on its merits and be fairer to both parties. Id.

Accordingly, Defendants' motion to withdraw admissions deemed admitted will be GRANTED, and Defendants' deemed admissions will be withdrawn. At the hearing, counsel for the parties should be prepared to discuss a deadline for Defendants to provide their responses to Plaintiff's Request for Admissions.

6. [17-13859](#)-A-7 **IN RE: KYLE PENNINGTON**  
[17-1091](#) [CAE-1](#)

RESCHEDULED STATUS CONFERENCE RE: COMPLAINT  
12-16-2017 [[1](#)]

MARTINEZ V. PENNINGTON  
KEVIN LITTLE/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

7. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**  
[24-1020](#) [CAE-1](#)

STATUS CONFERENCE RE: NOTICE OF REMOVAL  
7-30-2024 [[1](#)]

HACIENDA HOMEOWNERS FOR JUSTICE ET AL V. LA HACIENDA  
RESPONSIVE PLEADING

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

DISPOSITION: Continued October 31, 2024 at 11:00 a.m.

ORDER: The court will issue an order.

Based on the stipulation of the parties to continue the motion for remand to October 30, 2024 at 9:30 a.m. (matter #8 below), the status conference will be continued to October 31, 2024 at 11:00 a.m.

8. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**  
[24-1020](#) [OHS-2](#)

MOTION FOR REMAND  
8-28-2024 [[25](#)]

HACIENDA HOMEOWNERS FOR JUSTICE ET AL V. LA HACIENDA  
MARC LEVINSON/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 30, 2024 at 9:30 a.m.

NO ORDER REQUIRED.

On September 19, 2024, the court issued an order continuing the hearing on the motion or remand to October 30, 2024 at 9:30 a.m. Doc. #37.

9. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**  
[24-1027](#) [FW-4](#)

MOTION FOR REMAND  
8-29-2024 [\[7\]](#)

LA HACIENDA MOBILE ESTATES, LLC V. CITY OF FRESNO ET AL  
UNKNOWN TIME OF FILING/ATTY. FOR MV.

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

On August 29, 2024, the defendant filed a motion for remand (FW-4), notice of hearing, request for judicial notice along with a certificate of service. Doc. ##7-10. On August 29, 2024, the defendant filed a duplicate motion for remand (JJB-1), notice of hearing, request for judicial notice along with a certificate of service. Doc. ##11-14. The court deems Doc. ##7-10 to be duplicates of Doc. ##11-14. Therefore, the duplicate motion, notice of hearing, request for judicial notice, and certificate of service (Doc. ##7-10) will be DROPPED AS MOOT.

10. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**  
[24-1027](#) [JJB-1](#)

MOTION FOR REMAND  
8-29-2024 [\[11\]](#)

LA HACIENDA MOBILE ESTATES, LLC V. CITY OF FRESNO ET AL  
JONATHAN BELAGA/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice of this motion and related pleadings were mailed on August 29, 2024, with a hearing date set for September 25, 2024, which is less than 28 days from the date of mailing. Doc. #14. Pursuant to Local Rule of Practice 9014-1(f)(2)(A), motions in an adversary proceeding may not be set for hearing on less than 28 days' notice prior to the hearing date.

11. [23-12893](#)-A-7    **IN RE: RAYMOND HERNANDEZ**  
[24-1008](#)    [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
4-19-2024    [[1](#)]

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

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

DISPOSITION:        Continued October 17, 2024 at 11:00 a.m.

ORDER:                The court will issue an order.

Based on the final ruling on the plaintiff's motion for default judgment that is set for hearing on this calendar (matter #12 below), the status conference will be continued to October 17, 2024 at 11:00 a.m. to allow for counsel for the plaintiff to submit an order approving the motion for default judgment as well as a default judgment.

The plaintiff shall file and serve a status report on or before October 10, 2024 if a default judgment has not been entered in this adversary proceeding by that date.

12. [23-12893](#)-A-7    **IN RE: RAYMOND HERNANDEZ**  
[24-1008](#)    [FW-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT  
8-2-2024    [[17](#)]

FEAR V. HERNANDEZ  
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION:        Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the defendant to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Peter L. Fear ("Plaintiff"), chapter 7 trustee, commenced this adversary proceeding by filing a complaint on April 19, 2024 ("Complaint"). Doc. #1. By the Complaint, Plaintiff seeks a judgment (1) declaring the transfer of a 1954 Chevrolet Bel Air ("Vehicle") made to Francisco T. Hernandez ("Defendant") by debtor Raymond Hernandez ("Debtor") is deemed fraudulent and should be avoided; (2) ordering the turnover of the Vehicle to the Plaintiff, or in the alternative, the value of the Vehicle paid to the Plaintiff; and (3) the court order that avoidance of the transfer is preserved for the benefit of the bankruptcy estate. Doc. #1. This court has jurisdiction pursuant to 28 U.S.C. § 157(b)(1).

Defendant failed to respond to the Complaint. On June 28, 2024, Plaintiff filed a request for entry of default. Doc. ##12, 13. On July 9, 2024, the default of Defendant was entered. Doc. #14. Plaintiff now moves for a default judgment against Defendant ("Motion"). Doc. #17. Defendant has not responded to the Complaint, to the entry of his default in this adversary proceeding, or to this Motion.

In support of the Motion, Plaintiff requests the court take judicial notice of Debtor's chapter 7 petition and supporting documents in bankruptcy case number 23-12893-A-7, United States Bankruptcy Court, Eastern District California ("Bankruptcy Case"). Doc. #21.

Federal Rule of Evidence 201(b) provides the criteria for judicially noticed facts. Courts may take judicial notice of matters of public record, and the court takes judicial notice of the documents recorded in Fresno County. See Rosal v. First. Fed. Bank of Cal., 671 F. Supp. 2d 1111, 1120 (N.D. Cal. 2009). As to the documents filed in the Bankruptcy Case, the records of court proceedings cannot reasonably be questioned, and the court takes judicial notice of those documents. The court does not take judicial notice of the truth of the contents of any documents. Faulkner v. M & T Bank (In re Faulkner), 593 B.R. 263, 273 n.2 (Bankr. E.D. Pa. 2018).

Federal Rule of Civil Procedure 55, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7055, "gives the court considerable leeway as to what it may require as a prerequisite to the entry of a default judgment." Televideo, 826 F.2d at 917. "The general rule of law is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." Geddes v. United Fin. Grp., 559 F.2d 557, 560 (9th Cir. 1977). Factors which may be considered by the court in exercising discretion as to the entry of default judgment include: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

The facts set out in the Complaint are as follows. Debtor filed a voluntary chapter 7 bankruptcy petition on December 27, 2023. Ex. A, Doc. #22. Four months prior the filing of the Bankruptcy Case, Debtor transferred the Vehicle, a restored 1954 Chevrolet Bel Air, to his son, Defendant. Compl. ¶¶ 9-11, Doc. #1. At the time of the transfer, Debtor was insolvent, the Vehicle was worth \$37,000.00, and Defendant gave no consideration to Debtor for the transfer of the Vehicle. Compl. ¶¶ 12-14, Doc. #1. Trustee alleges that at the time of the transfer, Debtor believed or reasonably should have believed that Debtor would incur debts beyond Debtor's ability to pay as the debts came due and that the transfer was for the benefit of an insider of Debtor. Compl. ¶ 25, Doc. #1. Further, the value of the consideration for the transfer was not reasonably equivalent to the value of the Vehicle. Compl. ¶ 27, Doc. #1.

Plaintiff was appointed the chapter 7 trustee in Debtor's Bankruptcy Case, in which capacity Plaintiff duly remains. Decl. of Peter L. Fear, Doc. #19. Debtor gave the Vehicle to Defendant approximately one year before filing for bankruptcy for no consideration. Stmt. of Fin. Affairs, Doc. #1; Fear Decl., Doc. #19. Debtor paid \$37,000 for the Vehicle when Debtor purchased the Vehicle in February 2022. Fear Decl., Doc. #19. On March 4, 2024, counsel for Plaintiff made a demand to Defendant for the turnover of the Vehicle or payment of the fair market value of the Vehicle by Defendant, which was ignored by the Defendant, as was this lawsuit. Compl. ¶¶ 15-16, Doc. #1. As a result, Plaintiff has been unable to identify the location of the Vehicle or verify that the Vehicle has not been damaged or otherwise reduced in value by the actions of Defendant.

Without a judgment determining that Defendant is liable for the amount of the Vehicle, Plaintiff will either be forced to incur significant time and money finding the Vehicle that should have been turned over already, and taking possession of the Vehicle, or will be unable to obtain recovery at all. Plaintiff asserts it is appropriate for the court to order judgment against Defendant in favor of Plaintiff in the amount of \$37,000.00 unless and until the Vehicle is turned over by Defendant.

The court finds that entry of default judgment is appropriate in this case. The merits of Plaintiff's claim, the sufficiency of the Complaint, and the lack of the possibility of disputes concerning material fact favor entering default judgment. Plaintiff is entitled to a judgment determining that: (1) declaring the transfer of the Vehicle made to Defendant by Debtor is deemed fraudulent and should be avoided; (2) ordering the turnover of the Vehicle to the Plaintiff, or in the alternative, the value of the Vehicle paid to the Plaintiff; and (3) the court order that avoidance of the transfer is preserved for the benefit of the bankruptcy estate.

Accordingly, Plaintiff's Motion is GRANTED. Judgment shall be entered in favor of Plaintiff: (1) declaring that the transfer of the Vehicle made to Defendant by Debtor is fraudulent and should be avoided; (2) ordering the turnover of the Vehicle to Plaintiff, or in the alternative, the value of the Vehicle (\$37,000.00) paid to the Plaintiff; and (3) ordering that avoidance of the transfer of the Vehicle is preserved for the benefit of the bankruptcy estate.