

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, September 28, 2021
Place: Department B – Courtroom #13
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
GL-1 CALIFORNIA LOCAL HEALTH CARE DISTRICT**

CONTINUED MOTION TO FILE AMENDED PROOF OF CLAIM
12-29-2020 [[669](#)]

DEPARTMENT OF HEALTH CARE
SERVICES/MV
RILEY WALTER/ATTY. FOR DBT.
GRANT LIEN/ATTY. FOR MV.
CONT'D TO 11/9/21 PER ECF ORDER #720

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

DISPOSITION: Continued to November 9, 2021.

NO ORDER REQUIRED.

The parties stipulated to continue this matter due to ongoing settlement negotiations. Doc. #717. On September 10, 2021, the court approved the stipulation and continued the matter to November 9, 2021 at 9:30 a.m. Doc. #720. The deadlines to file and serve responsive pleadings shall be the same as if the continued hearing date was the initial original hearing date.

2. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
WJH-18 CALIFORNIA LOCAL HEALTH CARE DISTRICT**

CONTINUED OBJECTION TO CLAIM OF DEPARTMENT OF HEALTH CARE
SERVICES, CLAIM NUMBER 61
10-19-2020 [[657](#)]

COALINGA REGIONAL MEDICAL
CENTER, A CALIFORNIA LOCAL
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 11/9/21 PER ECF ORDER #719

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

DISPOSITION: Continued to November 9, 2021.

NO ORDER REQUIRED.

The parties stipulated to continue this matter due to ongoing settlement negotiations. Doc. #715. On September 10, 2021, the court approved the stipulation and continued the matter to November 9, 2021 at 9:30 a.m. Doc. #719. The deadlines to file and serve responsive pleadings shall be the same as if the continued hearing date was the initial original hearing date.

3. [20-11992](#)-B-11 **IN RE: CHAR PHAR INVESTMENTS, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
6-12-2020 [[1](#)]

WILLIAM COWIN/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

4. [20-11992](#)-B-11 **IN RE: CHAR PHAR INVESTMENTS, LLC**
[WLC-12](#)

CONTINUED CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR
CHAR PHAR INVESTMENTS, LLC
7-6-2021 [[228](#)]

WILLIAM COWIN/ATTY. FOR DBT.

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

DISPOSITION: Continued to October 26, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

In anticipation of the dismissal of the debtor's chapter 11 case in matter #5 below, the parties stipulated to continue this matter. Doc. #276. On September 24, 2021, the court approved the stipulation and continued the matter to October 26, 2021 at 9:30 a.m. Doc. #286. The deadlines to file and serve responsive pleadings shall be the same as if the continued hearing date was the initial original hearing date.

5. [20-11992](#)-B-11 **IN RE: CHAR PHAR INVESTMENTS, LLC**
[WLC-14](#)

MOTION TO DISMISS CASE
9-7-2021 [\[272\]](#)

CHAR PHAR INVESTMENTS, LLC/MV
WILLIAM COWIN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Debtor-in-possession Char Phar Investments, LLC ("DIP") moves to voluntarily dismiss this case under 11 U.S.C. § 1112(b). Doc. #272.

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

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

The motion was also filed with an *ex parte* application for an order shortening time ("OST"). Doc. #268. However, the court did not approve the OST application because it was filed with more than 21 days remaining before the hearing. The subsequent motion to dismiss was filed on exactly 21 days' notice in accordance with Fed. R. Bankr. P. 2002(a)(4).

DIP filed chapter 12 bankruptcy on June 12, 2020. Doc. #1. Michael H. Meyer was appointed as standing chapter 12 trustee on that same day, and he was deemed to have accepted the offer on the seventh day after receipt of the notice of selection. Doc. #2.

This case was converted to chapter 11 on August 11, 2020 and Trustee Meyer was removed from the case. Doc. #89. No chapter 11 trustee has been appointed.

The primary reason DIP filed bankruptcy was to prevent a trustee's sale scheduled by secured creditor State Bank of India (California) ("SBI"). Doc. #274. DIP and SBI reached an agreement in which the protection of the automatic stay is no longer needed, so DIP now seeks to dismiss this chapter 11 case under 11 U.S.C. § 1112(b). *Id.*

11 U.S.C. § 1112(b) allows the court to dismiss a chapter 11 case. Absent "unusual circumstances," § 1112(b)(1) provides that the court

shall convert or dismiss a case under this chapter for "cause," whichever is in the best interests of creditors of the estate.

Section 1112(b)(4) includes a non-exhaustive list of "causes." Cause exists where there is "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." § 1112(b)(4)(A). Cause exists where creditors will not benefit from administration of the estate. *In re Brogdon Inv. Co.*, 22 B.R. 546, 549 (Bankr. N.D. Ga. 1982) ("There is simply nothing to reorganize, no creditors to benefit from the administration of the estate in this court, and no reason to continue the reorganization.") Cause also exists if reorganization is no longer necessary or a debtor's circumstances have materially changed since the filing of the case. *In re OptInRealBig.com, LLC*, 345 B.R. 277, 283-84 (Bankr. D. Colo. 2006).

The court should "consider other factors as they arise and use its equitable power to reach the appropriate result." *Pioneer Liquidating Corp. v. U.S. Trustee (In re Consol. Pioneer Mortg. Entities)*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000), *aff'd*, 264 F.3d 803 (9th Cir. 2001). The court has broad discretion in determining cause. *Id.*

If there is "cause" to convert or dismiss, the court must then decide: (1) whether dismissal is in the best interests of creditors and the estate; and (2) identify whether there are unusual circumstances that establish dismissal or conversion is not in the best interests of creditors and the estate. *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 612 (B.A.P. 9th Cir. 2001).

DIP is a farmer within the meaning of 11 U.S.C. § 101(20). As result, the court may not convert this case to chapter 7 unless DIP consents to conversion. § 1112(c). Ravinderpaul S. Tut, DIP's representative, declares that DIP expressly does not consent to conversion to chapter 7. Doc. #274. So, conversion to chapter 7 is unavailable here.

DIP contends that cause exists because DIP no longer needs the protection of the automatic stay due to its agreement with SBI. Doc. #272. Though said agreement is not attached to this motion, DIP offers to provide an overview of the agreement at the hearing. *Id.* Further, despite DIP's efforts to confirm a plan, it has been unable to operate at sufficiently profitable levels to be able to propose a feasible plan due to the drought and low crop prices.

Thus, there is substantial or continuing loss to or diminution of the estate by keeping this case open. The estate will continue to incur quarterly U.S. Trustee and legal fees with no reasonable likelihood of rehabilitation. § 1112(b)(4)(A). Reorganization is no longer necessary due to the agreement executed by DIP and SBI and it has no reason to continue this bankruptcy. Moreover, DIP's circumstances have materially changed insofar that drought conditions worsened, and crop prices remained low. DIP's expectation of a typical growing season has not come to fruition.

Dismissal appears to serve the interests of creditors and the estate. There do not appear to be any unusual circumstances establishing that dismissal or conversion is not in the best interests of the estate.

This matter will be called as scheduled to inquire whether any parties in interest oppose. In the absence of opposition, this motion will be GRANTED. The chapter 11 case will be dismissed without prejudice under 11 U.S.C. § 1112(b)(1) for cause.

1:30 PM

1. [21-11302](#)-B-7 **IN RE: BARRY PEARLSTEIN AND KELLY HOPE**
[DRJ-1](#)

MOTION TO AVOID LIEN OF YP ADVERTISING & PUBLISHING, LLC
8-26-2021 [\[16\]](#)

KELLY HOPE/MV
DAVID JENKINS/ATTY. FOR DBT.

Since posting the original pre-hearing dispositions, the court has changed its intended ruling on this matter.

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.

Barry David Pearlstein and Kelly Marie Hope ("Debtors") seek to avoid a judicial lien in favor of YP Advertising & Publishing, LLC ("Creditor") in the amount of \$290,024.37 and encumbering residential real property located at 1638 Goshen Avenue, Clovis, CA 93611.¹ Doc. #16.

No party in interest filed written opposition. However, chapter 7 trustee Irma Edmonds ("Trustee") was not properly served. The court originally intended to continue this matter, but on September 27, 2021, Trustee filed a waiver of proper service. Doc. #25.

This motion will be GRANTED.

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

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the

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

Here, a judgment was entered against Debtors in favor of Creditor in the sum of \$290,024.37 on May 5, 2016. Doc. #19, Ex. A. The abstract of judgment was issued on July 26, 2016 and recorded in Fresno County on August 23, 2016. *Id.* That lien attached to Debtor's interest in Property. Doc. #18

As of the petition date, Property had an approximate value of \$507,709.00. *Id.*; Doc. #1, *Sched. A/B*. The unavoidable liens totaled \$410,994.82 on that same date. This consists of two deeds of trust totaling \$222,627.00 in favor of Bank of America and five tax liens in favor of the Internal Revenue Service ("IRS") totaling \$188,367.82.² *Id.*, *Sched. D*. Debtors claimed a homestead exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$300,000.00. Doc. #1, *Sched. C*. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property	\$507,709.00
Total amount of unavoidable liens	- \$410,994.82
Remaining unencumbered equity	= \$96,714.18
Debtors' "homestead" exemption	- \$300,000.00
Extent over-exempted	= (\$203,285.82)
Creditor's judicial lien	- \$290,024.37
Extent exemption impaired	= (\$493,310.19)

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

No party in interest timely filed written opposition. Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, this motion will be GRANTED.

¹ Debtors complied with Rule 7004(b)(3) by serving The Corporation Trust Company, the registered agent for YP Advertising & Publishing, LLC, at its registered agent address on August 26, 2021. Doc. #20.

² There are first and second priority deeds of trust in favor of Bank of America are in the amounts of \$172,859.00 and \$49,768.00, respectively. The five tax liens in favor of the IRS are in the amounts of (i) \$2,435.00; (ii) \$38,938.45; (iii) \$85,777.04; (iv) \$10,643.13; and (v) \$50,574.20. Doc. #1, *Sched. D*.

2. [21-11764](#)-B-7 **IN RE: DONALD FREEMAN**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
8-10-2021 [\[13\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue an order.

Chapter 7 trustee Peter L. Fear ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors. Doc. #13.

Donald Earl Freeman ("Debtor") timely filed written opposition. Debtor declares that he failed to appear at the meeting of creditors because he was having difficulty logging into Zoom at the time of the meeting. Doc. #16. Debtor is aware of the continued meeting on October 4, 2021 at 3:00 p.m. and he intends to appear at the meeting via Zoom at that time. *Id.*

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for October 4, 2021 at 3:00 p.m. If Debtor fails to do so, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Rules 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. Trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

3. [21-12197](#)-B-7 **IN RE: OMAR MERCADO**
[JRL-1](#)

MOTION TO COMPEL ABANDONMENT
9-21-2021 [\[14\]](#)

OMAR MERCADO/MV
JERRY LOWE/ATTY. FOR DBT.
OST 9/22/21

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Omar Mercado ("Debtor") asks the court for an order compelling chapter 7 trustee Peter L. Fear ("Trustee") to abandon the estate's interest in Debtor's sole proprietorship business, "Omar's Concrete," a concrete construction business. Doc. #14. The assets (collectively "Business Assets") consist of a 2015 F250 Ford pickup truck, a business checking account, hand-held concrete finishing tools, a concrete saw, pouches, set up bags, and miscellaneous concrete work tools.

This motion was set for hearing on the notice procedure specified in Local Rule of Practice ("LBR") 9014-1(f)(3) and filed with an *ex parte* application for an order shortening time ("OST"). Consequently, the creditors, chapter 7 trustee, U.S. trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

For good cause existing, the court granted the application on September 22, 2021 and reduced the period of notice required for the motion. Doc. #18. The court ordered that notice of the hearing shall be adequate if mailed to all interested parties by first-class mail on or before the following business day after entry of the order, which was September 23, 2021. Further, motion documents were to be emailed to Trustee on or before September 23, 2021.

Debtor served all motion documents with a copy of the proposed OST on all interested parties by first-class mail on September 21, 2021, as well as Trustee by email on that same day. Doc. #17.

Debtor scheduled the Business Assets as follows:

Asset	Value	Exempted	Lien	Net
Hand-held concrete finishing tools, concrete saw, pouches, set up bags, and miscellaneous concrete work tools	\$800.00	\$800.00	\$0.00	\$0.00
Bank of America Business Checking Account	\$5.00	\$5.00	\$0.00	\$0.00
2015 Ford F250 pickup truck, 2WD, crew cab, gasoline engine with 165,000 miles in good condition	\$20,000.00	\$20,000.00	\$0.00	\$0.00
Totals:	\$20,805.00	\$20,805.00	\$0.00	\$0.00

Doc. #1, *Sched. A/B*, ¶¶ 17.1; 40; C-D. All Business Assets have been exempted for their full value under California Code of Civil Procedure ("C.C.P.") § 703.140(b)(5) and (6) and do not appear to be encumbered by any security interests. *Id.*

Debtor declares that he began operating his business in December 2020. Doc. #16. This motion was filed on shortened time because this business provides income to pay his ongoing bills. Debtor declares he cannot pay those bills unless the business is abandoned. *Id.*; *cf.* Doc. #9. Debtor contends that there is not any goodwill value in the business because his customers hire him to perform services based on his personal knowledge and skill, so there is no customer list that could be sold. Doc. #16. Debtor estimates that the value of his business is equal to the value of his tools and supplies.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate." To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to church property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at **16-17 (B.A.P. 9th Cir. 2014).

In the absence of opposition at the hearing, this motion will be GRANTED. The Business Assets were accurately scheduled and entirely exempted. In the absence of opposition, the court will find that the Business Assets are of inconsequential value and benefit to the estate.