UNITED STATES BANKRUPTCY COURT
Eastern District of California
HONORABLE RENÉ LASTRETO II
Department B – Courtroom #13
Fresno, California

Hearing Date: Wednesday, October 25, 2023

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

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. 23-11116-B-13 **IN RE: HUMBERTO/NANCY VIDALES**
MHM-2

CONTINUED MOTION TO DISMISS CASE
8-29-2023 [60]

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 29, 2023, at 9:30 a.m.

ORDER: The court will issue an order.

This matter will be continued to November 29, 2023, at 9:30 a.m. to be heard in conjunction with Debtor's *Motion to Value Collateral*. (Doc. #82).

2. 23-11116-B-13 **IN RE: HUMBERTO/NANCY VIDALES**
TCS-6

MOTION TO CONFIRM PLAN
9-13-2023 [64]

NANCY VIDALES/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 29, 2023, at 9:30 a.m.

ORDER: The court will issue an order.

This matter will be continued to November 29, 2023, at 9:30 a.m. to be heard in conjunction with Debtor's *Motion to Value Collateral*. (Doc. #82).

3. 23-11328-B-13 **IN RE: MATTHEW YBARRA AND HOPE RAMIREZ**
KLG-1

CONTINUED MOTION TO CONFIRM PLAN
8-21-2023 [26]

HOPE RAMIREZ/MV
ARETE KOSTOPOULOS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Objection Sustained.

ORDER: The court will issue an order.

This objection was originally heard on September 27, 2023. Doc. #36.

Chapter 13 trustee Michael H. Meyer ("Trustee") objected to confirmation of the *Chapter 13 Plan* filed by Matthew Ybarra and Hope Ramirez ("Debtors") on August 22, 2023, under 11 U.S.C. § 1325(a)(1) and (a)(9) because the plan does not provide for all of Debtors' projected disposable income to be applied to unsecured creditors under the plan. Doc. #34.

The court continued this objection to October 25, 2023. Doc. #37. Debtor was directed to file and serve a written response to the objection not later than fourteen (14) days before the continued hearing date, or file a confirmable, modified plan in lieu of a response not later than seven (7) days before the continued hearing date, or the objection would be sustained on the grounds stated in the objection without further hearing. *Id.*

Debtor neither filed a written response nor a modified plan. Therefore, Trustee's objection will be SUSTAINED on the grounds stated in the objection.

4. 23-12028-B-13 **IN RE: JACQUELINE KEENEY**
MHM-1

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-25-2023 [14]

MICHAEL MEYER/MV
ARETE KOSTOPOULOS/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Debtor's Claim of Exemptions. Doc. #14. Jaqueline Keeney ("Debtor") seeks to

exempt a JP Morgan Chase Savings account, under C.C.P. § 704.225, in the amount of $13,423.65. Doc. #1 (*Sched. C, pg. 3*). As Trustee notes, C.C.P. § 704.225 exempts: "Money in a judgment debtor's deposit account that is not otherwise exempt under this chapter is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor." Doc. #14 (quoting C.C.P. § 704.225). Trustee further notes that it is Debtor's burden to demonstrate that the $13,423.65 is necessary for the support of the Debtor. Debtor has not responded to the Objection.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

Neither the Debtor nor any other party at interest has responded, and Debtor's default is entered. Accordingly, this objection will be SUSTAINED.

5. 20-13430-B-13 **IN RE: RAUL/JESSICA SANCHEZ**
JDR-2

MOTION TO SELL
9-19-2023 [45]

JESSICA SANCHEZ/MV
JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Raul and Jessica Sanchez bring this *Motion to Sell* a vehicle. Doc. #45. This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

For motions filed on 28 days' notice, LBR 9014-1(f)(1)(B) requires the movant to notify respondents that any opposition to the motion must be in writing and filed with the court at least 14 days

preceding the date of the hearing. Here, while the Notice accompanying the instant motion contains the proper hearing date in the caption, the body of the Notice erroneously states that the motion would be heard by the court on September 21, 2023. Doc. #46.

For that reason, this motion will be DENIED WITHOUT PREJUDICE.

6. 23-11730-B-7 **IN RE: BRIGIDA MEDEL**
MHM-2

MOTION TO DISMISS CASE
9-26-2023 [19]

MICHAEL MEYER/MV
T. O'TOOLE/ATTY. FOR DBT.
CONVERTED 10/10/23

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This case was converted to Chapter 7 on October 10, 2023. (Doc. #28). The motion will be DENIED AS MOOT.

7. 23-11634-B-13 **IN RE: DEBRA ANDERSON**
AP-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY FIRST TECH FEDERAL CREDIT UNION
8-24-2023 [17]

FIRST TECH FEDERAL CREDIT UNION/MV
SCOTT LYONS/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

The Movant and Debtor settled this matter by stipulation previously, and Movant entered a Notice of Withdrawal on September 26, 2023. Doc. #35.

8. 23-11634-B-13 **IN RE: DEBRA ANDERSON**
MHM-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
9-11-2023 [29]

SCOTT LYONS/ATTY. FOR DBT.
WITHDRAWN

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

WITHDRAWN. No order required.

On September 29, 2023, the Trustee filed a Notice of Withdrawal in this matter. Doc. #44. Accordingly, this matter is withdrawn.

9. 23-11635-B-13 **IN RE: JEFFERY SHERWOOD AND CRYSTAL SHERWOOD VARGAS**
MAZ-1

MOTION TO VALUE COLLATERAL OF HYUNDAI CAPITAL AMERICA
9-18-2023 [21]

JEFFERY SHERWOOD/MV
MARK ZIMMERMAN/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.

Jeffery S. Sherwood and Krystal K. Sherwood-Vargas (collectively "Debtors") move for an order valuing a 2020 Kia Niro ("Vehicle") at $17,707.00 under 11 U.S.C. § 506(a). Doc. #21. Vehicle is encumbered by a purchase money security interest in favor of Kia Finance America ("Creditor"). *Id.*; *cf.* Proof of Claim No. 3-1. Debtor complied with Fed. R. Bankr. P. 3012(b) and 7004(b)(3) by serving Creditor's CEO/CFO at Creditor's headquarters and at the address listed in Creditor's proof of claim on June 22, 2023. Doc. #30.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations

will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

No party in interest timely filed written opposition. Accordingly, defaults of all parties in interest will be entered, and this motion will be GRANTED.

11 U.S.C. § 1325(a)(*) ("the hanging paragraph") states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) the debt was incurred within 910 days preceding the filing of the petition, and (3) the collateral is a motor vehicle acquired for the personal use of the debtor.

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) 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 date. "Replacement value" 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.

Here, Debtors borrowed money from Creditor to purchase Vehicle sometime in July 2020, which is more than 910 days preceding the July 28, 2023, petition date. Doc. #23; Claim 3. Thus, the elements of the hanging paragraph are not met and § 506 is applicable.

Joint debtor Jeffery Sherwood declares Vehicle has a replacement value of $17,707.00. Doc. #23. Debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Creditor's secured claim will be fixed at $17,707.00. The proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

10. 23-11945-B-13 **IN RE: STEPHANIE HILL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-6-2023 [20]

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

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

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

11. 23-11047-B-13 **IN RE: JOSE VERA AND ROSA LEON DE VERA**
SLL-2

MOTION TO CONFIRM PLAN
9-11-2023 [49]

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

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

DISPOSITION: Continued to November 29, 2023, at 9:30 a.m.

ORDER: The court will issue an order.

Jose Vera and Rosa Leon De Vera ("Debtors") move for an order confirming the *Second Modified Chapter 13 Plan* dated September 11, 2023. Doc. #52.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation of the plan under 11 U.S.C. § 1322(a because the plan fails to provide for submission of all or such portion of future earnings or other future income to the supervision and control of the Trustee as is necessary for execution of the plan. Doc. #59. Specifically, Trustee avers that:

> Additional provision regarding 3.07 provides that the pre-petition arrears of $3,122.01 and post-petition arrears of $1,015.96 will be paid a shared dividend of $125.39 per month. Pre-petition arrears and post-petition arrears must be paid separately. The Trustee cannot make

a partial post-petition mortgage payment. Section 3.07(b)(4) of the plan provides that the Trustee will not make a partial distribution for a post-petition monthly payment. The plan should provide that the post-petition arrears will be paid in full by month 36 of the plan.

Id.

This motion to confirm plan will be CONTINUED to **November 29, 2023, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's and Creditor's objections to confirmation are withdrawn, the Debtor shall file and serve a written response to the objections no later than fourteen (14) days before the continued hearing date. The response shall specifically address each issue raised in the objection(s) to confirmation, state whether each issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee shall file and serve a reply, if any, no later than seven (7) days prior to the hearing date.

If the Debtor elects to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than seven (7) days before the continued hearing date. If the Debtor does not timely file a modified plan or a written response, the objection will be sustained on the grounds stated, and the motion will be denied without further hearing.

12. 22-12149-B-13 **IN RE: BEVERLY TAYLOR**
WLG-5

AMENDED MOTION TO MODIFY PLAN
9-21-2023 [87]

BEVERLY TAYLOR/MV
MICHAEL REID/ATTY. FOR DBT.

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

On October 9, 2023, Beverly Taylor, Debtor in this matter ("Debtor") filed a Notice of Withdrawal, stating that she wished to withdraw the instant Motion to Modify Plan because she filed a *Third Amended Plan* on September 21, 2023. Doc. #94.

13. 22-12056-B-13 **IN RE: SHANNON HAGER**
AJC-1

MOTION FOR COMPENSATION FOR ANDREW J CHRISTENSEN, DEBTORS ATTORNEY(S)
9-26-2023 [107]

ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: GRANTED

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

Andrew Christensen ("Christensen" or "Applicant"), requests compensation under 11 U.S.C. § 330 in the sum of $10,000.00. Doc. #107. The moving papers aver that Christensen only represented Shannon Hager, debtor in the above-styled case ("Debtor") in litigation regarding a Motion to Annul Stay that was filed against Debtor on April 19, 2023. *See Motion for Relief from Stay*, Doc. #44. In the larger bankruptcy case, which is ongoing, Debtor is represented by Robert S. Williams ("Williams"). On May 25, 2023, this court entered an order and memorandum opinion in Debtor's favor. Doc. #70. While Christensen presents evidence that he actually incurred over $21,000.00 in attorney's fees in this representation, but that he did not bill for a large part of that time and that, after application of his lodestar rate of $650.00 per hour, he further discounted his bill of $14,276.20 down to $10,000.00. Doc. ##107, 111. Christensen further avers that the $10,000.00 requested is presently in his trust account awaiting court approval for withdrawal and that, furthermore, these funds did not come from estate assets but rather came from Debtor's father and a friend of Debtor's and were previously disclosed to this court. Doc. 107.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party filed a response to the Application, and so the defaults of all other parties in interest are entered.

Debtor filed the underlying voluntary Chapter 13 petition on December 1, 2022. Doc. #1. Christensen avers in his moving papers that the court approved his retention as counsel and that he fully disclosed the source of funding for the $10,000.00 currently in his trust account. However, the court has reviewed the docket and filings in this case and has not been able to identify the Retention Order or any filings from Christensen regarding the origin of the funds.

Christensen avers that during his employment in this matter, he performed legal services necessary to assist debtor in defending against a Motion to Annul Stay under the recently enacted Cal. Civil Code § 2924m ("the California Statute). Doc. #107. Christensen avers that his was the first successful defense brought under the California Statute, and only the second case to litigate it at all. *Id.* Christensen points to his success in saving Debtor's home from foreclosure, and through a new and novel law, as evidence of the value he brought to Debtor and to the estate. *Id.* The Application is accompanied by Exhibits consisting of (A) a narrative summary, (B) a detailed statement of fees and expenses, and (C) a detailed report of fees, categorized by task. *Id.*

The motion is accompanied by a declaration by Debtor evincing approval of the fee application and concurring that the funds for Christensen's representation came from Debtor's father and from a friend. Doc. #109. The motion is also accompanied by a declaration from Christensen outlining, *inter alia*, his professional qualifications, the work he performed for Debtor, and his normal hourly rate. Doc. #111.

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

The court finds the services and expenses as outlined above reasonable, actual, and necessary, and the court will tentatively GRANT the application. However, the hearing will proceed as scheduled so that Christensen can address the court's concerns regarding the Order for Retention.

14. 20-11157-B-13 **IN RE: JUAN ARECHIGA**
TMO-2

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
9-17-2023 [71]

JUAN ARECHIGA/MV
T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/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.

Juan Pelayo Arechiga ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Capital One Bank ("Capital One" or "Creditor") in the sum of $7,886.54 and encumbering residential real property located at 1325 Noreen Way, Madera, California ("Property"). Doc. #71.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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)). The court is hampered by the fact that Debtor did not provide an estimate of the amount currently owed, and so used the sum on the recorded judgment.

Here, a judgment was entered against Debtor in favor of Capital One in the amount of $7,886.54 on August 15, 2019. *Ex. A*, Doc. #81. The abstract of judgment was issued on November 15, 2019, and it was recorded in Madera County on December 31, 2019. *Id.* That lien attached to Debtor's interest in Property. *Id.*

As of the petition date, Property had an approximate value of $168,825.00. *Sched. A/B*, Doc. #1. In his Schedule C, Debtor claimed a $100,000 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C.* However, the moving papers assert that Debtor's exemption is only $75,000.00 based on an "Amended Schedule C." Doc.#79. No such document appears on the docket, however.

Property is encumbered by a first deed of trust in favor of Sierra Pacific Mortgage ("SPM") in the amount of $137,802.00. *Sched. D*, Doc. #1. Property is further encumbered by three judgment liens: (1) a judgment lien in favor of Citibank, N.A. ("Citi") in the amount of $13,610.73 recorded on December 6, 2019, (2) this judgment lien in favor of Capital One in the amount of $7,886.54 recorded on December 31, 2019, and (3) a judgment lien in favor of Cavalry in the amount of $4,726.11 recorded on March 13, 2020. All three of the aforementioned judgment liens are the subjects of motions to avoid lien presently before the court.

Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. SPM	$137,802.00		Unavoidable
2. Citi	$13,610.73	12/6/19	Avoidable; matter #16 (TMO-4)
3. Capital One	$7,886.54	12/31/19	Avoidable; matter #14 (TMO-2)
4. Cavalry	$4,726.11	03/13/20	Avoided per matter #15 (TMO-3)

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B).

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

This lien is the most junior lien subject to avoidance (after the avoidance of the Cavalry lien), and there is not any equity to support this lien. Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien		$7,886.54
Total amount of unavoidable liens, including senior judgment liens not yet avoided	+	$151,412.00
Debtor's claimed exemption in Property	+	75,000.00
Sum	=	$234,298.54
Debtor's claimed value of interest absent liens	-	$168,825.00
Extent lien impairs exemption	=	$65,173.54

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

Fair market value of Property		$168,825.00
Total amount of unavoidable liens, including judicial liens not yet avoided	-	$151,412.00
Homestead exemption	-	$75,000.00
Remaining equity for judicial liens	=	($57,587.00)
Creditor's judicial lien	-	$7.8996.54
Extent Debtor's exemption impaired	=	($54,473.54)

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

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

15. 20-11157-B-13 **IN RE: JUAN ARECHIGA**
TMO-3

MOTION TO AVOID LIEN OF CAVALRY SPV I, LLC
9-17-2023 [77]

JUAN ARECHIGA/MV
T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/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.

Juan Pelayo Arechiga ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Cavalry SPV I, LLC ("Cavalry" or "Creditor") in the sum of $7,886.54 and encumbering residential real property located at 1325 Noreen Way, Madera, California ("Property"). Doc. #77.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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)). The court is hampered by the fact that Debtor did not provide an estimate of the amount currently owed, and so used the sum on the recorded judgment.

Here, a judgment was entered against Debtor in favor of Cavalry in the amount of $4,726.11 on October 16, 2019. *Ex. A*, Doc. #81. The abstract of judgment was issued on February 20, 2020, and it was recorded in Madera County on March 13, 2020. *Id.* That lien attached to Debtor's interest in Property. *Id.*
As of the petition date, Property had an approximate value of $168,825.00. *Sched. A/B*, Doc. #1. In his Schedule C, Debtor claimed a $100,000 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C.* However, the moving papers assert that Debtor's exemption is only $75,000.00 based on an "Amended Schedule C." Doc.#79. No such document appears on the docket, however.

Property is encumbered by a first deed of trust in favor of Sierra Pacific Mortgage ("SPM") in the amount of $137,802.00. *Sched. D*, Doc. #1. Property is further encumbered by three judgment liens: (1) a judgment lien in favor of Citibank, N.A. ("Citi") in the amount of $13,610.73 recorded on December 6, 2019, (2) a judgment lien in favor of Capital One in the amount of $7,886.54 recorded on December 31, 2019, and (3) the instant judgment lien in favor of Cavalry in the amount of $4,726.11 recorded on March 13, 2020. All three of the aforementioned judgment liens are the subjects of motions to avoid lien presently before the court.

Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. SPM	$137,802.00		Unavoidable
2. Citi	$13,610.73	12/6/19	Avoidable; matter #16 (TMO-4)
3. Capital One	$7,886.54	12/31/19	Avoidable; matter #14 (TMO-2)
4. Cavalry	$4,726.11	03/13/20	Avoidable; matter #15 (TMO-3)

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B).

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

This lien is the most junior lien subject to avoidance and there is not any equity to support the lien. Strict application of the

§ 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien		$4,729.11
Total amount of unavoidable liens, including senior judgment liens not yet avoided	+	$159,299.27
Debtor's claimed exemption in Property	+	75,000.00
Sum	=	$239,028.38
Debtor's claimed value of interest absent liens	-	$168,825.00
Extent lien impairs exemption	=	$70,203.38

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

Fair market value of Property		$168,825.00
Total amount of unavoidable liens, including judicial liens not yet avoided	-	$159,299.27
Homestead exemption	-	$75,000.00
Remaining equity for judicial liens	=	($65,474.27)
Creditor's judicial lien	-	$4,729.11
Extent Debtor's exemption impaired	=	($70,203.38)

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

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

16. 20-11157-B-13 **IN RE: JUAN ARECHIGA**
TMO-4

MOTION TO AVOID LIEN OF CITIBANK, NATIONAL ASSOCIATION
9-17-2023 [65]

JUAN ARECHIGA/MV
T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/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.

Juan Pelayo Arechiga ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Citibank, N.A. ("Citi" or "Creditor") in the sum of $13,610.73 and encumbering residential real property located at 1325 Noreen Way, Madera, California ("Property"). Doc. #65.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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)). The court is hampered by the fact that Debtor did not provide an estimate of the amount currently owed, and so used the sum on the recorded judgment.

Here, a judgment was entered against Debtor in favor of Cavalry in the amount of $13,610.78 on October 23, 2019. *Ex. A*, Doc. #67. The abstract of judgment was issued on November 18, 2019, and it was recorded in Madera County on December 6, 2019. *Id.* That lien attached to Debtor's interest in Property. *Id.* Debtor estimates that the current amount owed on account of this lien is $13,610.78. *Sched. D*, Doc. #1.

As of the petition date, Property had an approximate value of $168,825.00. *Sched. A/B*, Doc. #1. In his Schedule C, Debtor claimed a $100,000 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C.* However, the moving papers assert that Debtor's exemption is only $75,000.00 based on an "Amended Schedule C." Doc.#79. No such document appears on the docket, however.

Property is encumbered by a first deed of trust in favor of Sierra Pacific Mortgage ("SPM") in the amount of $137,802.00. *Sched. D*, Doc. #1. Property is further encumbered by three judgment liens: (1) this judgment lien in favor of Citi in the amount of $13,610.73 recorded on December 6, 2019, (2) a judgment lien in favor of Capital One lien in the amount of $7,886.54 recorded on December 31, 2019, and (3) a judgment lien in favor of Cavalry in the amount of $4,726.11 recorded on March 13, 2020. All three of the aforementioned judgment liens are the subjects of motions to avoid lien presently before the court.

Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. SPM	$137,802.00		Unavoidable
2. Citi	$13,610.73	12/6/19	Avoidable; matter #16 (TMO-4)
3. Capital One	$7,886.54	12/31/19	Avoided per matter #14 (TMO-2)
4. Cavalry	$4,726.11	03/13/20	Avoided per matter #15 (TMO-3)

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B).

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

This lien is the most junior lien subject to avoidance and there is not any equity to support the lien. Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien		$13,610.73
Total amount of unavoidable liens	+	$137,802.00
Debtor's claimed exemption in Property	+	75,000.00
Sum	=	$226,412.73
Debtor's claimed value of interest absent liens	-	$168,825.00
Extent lien impairs exemption	=	$57,587.73

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

Fair market value of Property		$168,825.00
Total amount of unavoidable liens	-	$137,802.00
Homestead exemption	-	$75,000.00
Remaining equity for judicial liens	=	($43,977.00)
Creditor's judicial lien	-	$13,610.73
Extent Debtor's exemption impaired	=	($57,587.73)

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

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

17. 22-10857-B-13 **IN RE: TEEBE KINFE**
SLL-2

CONTINUED MOTION TO MODIFY PLAN
8-22-2023 [37]

TEEBE KINFE/MV
STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

On October 16, 2023, Teebe G. Knife, Debtor in this matter ("Debtor") filed a Notice of Withdrawal, stating that Debtor wished to withdraw the instant Motion to Modify Plan. #48.

18. 23-11268-B-13 **IN RE: MELISSA JOHNSON**
DAB-2

MOTION TO CONFIRM PLAN
9-13-2023 [31]

MELISSA JOHNSON/MV
DAVID BOONE/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 29, 2023, at 9:30 a.m.

ORDER: The court will issue an order.

Melissa Kae Johnson ("Debtor") moves for an order confirming the *First Amended Chapter 13 Plan* dated May 7, 2023. Doc. #31.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation of the plan under 11 U.S.C. § 1325 (a)(6) because Debtor will not be able to make all payments under the plan. Doc. #36. Trustee states as follows:

> Debtor proposes a 36-month plan. Month 36 is June 2026. The plan provides for Technology Credit Union, secured by a 2019 Honda Insight, as a Class 4 creditor. On July 13, 2023, Technology Credit Union filed a proof of claim (Claim No. 4). According to the proof of claim attachments the "expected payoff date" is 07/02/2025, or month 25 of the plan. The proof of claim also lists pre-petition arrears in the amount of $157.69. Class 4 claims "mature after completion of this plan, are not in default." Since the claim of Technology Credit Union matures during the life of the plan and is in default,

per the proof of claim, the claim should be provided for in Class 2 of the plan.

Id.

Lakeview Loan Servicing, LLC ("Creditor") timely objected to confirmation of the plan under 11 U.S.C. §§ 1322(b)(2), (b)(5), and 1325 because Debtor is in default on the debt owed to Creditor, and so Creditor should be included in Class 1 rather than Class 4 as the plan provides. Doc. #38. The plan also fails to provide a cure for prepetition arrears of $3,098.62 owed to Creditor.

This motion to confirm plan will be CONTINUED to **November 29, 2023, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's and Creditor's objections to confirmation are withdrawn, the Debtor shall file and serve a written response to the objections no later than fourteen (14) days before the continued hearing date. The response shall specifically address each issue raised in the objection(s) to confirmation, state whether each issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee shall file and serve a reply, if any, no later than seven (7) days prior to the hearing date.

If the Debtor elects to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than seven (7) days before the continued hearing date. If the Debtor does not timely file a modified plan or a written response, the objection will be sustained on the grounds stated, and the motion will be denied without further hearing.

19. 23-10075-B-13 **IN RE: REFUJIO GUILLEN**
MHM-3

CONTINUED MOTION TO DISMISS CASE
8-15-2023 [121]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: If debtor's motion to confirm (RSW-5, #125 below) is granted, then this motion will be denied. **OR** If debtor's motion to confirm is denied, then this motion may be granted.

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

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

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

The basis for this motion was failure to confirm a chapter 13 plan, failure to make payments due under the plan, and unreasonable delay that is prejudicial to creditors.

Therefore, if the motion to confirm (RSW-5) is granted, then this motion will be denied. **OR** If the motion to confirm is denied, then this motion may be granted.

20. 23-10075-B-13 **IN RE: REFUJIO GUILLEN**
RSW-5

CONTINUED MOTION TO CONFIRM PLAN
8-23-2023 [125]

REFUJIO GUILLEN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Refujio Guillen ("Debtor") moves for an order confirming the *Second Modified Chapter 13 Plan* dated May 16, 2023. Doc. #125. This matter was originally set for September 27, 2023 and then continued to October 25, 2023.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation of the plan under 11 U.S.C. § 1322(a) and § 1325(a)(4) because (1) the plan only provides for a 1% distribution to general unsecured creditors but Debtor's filings indicate a net monthly income of $3223.46 in excess of the proposed monthly plan payment that has not been accounted for, (2) the plan does not propose to pay the entirety of the priority claim of the People of the State of California, and Debtor's objection to that claim has not yet been sustained, and (3) the plan fails to provide for the value, as of

the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is at least the amount that would be paid on such claim if the estate of the Debtor(s) was liquidated under a Chapter 7 of this title on such date. Doc. #148.

The People of the State of California filed an objection both joining parts of the Trustee's objection and raising a separate objection based on the liquidation analysis. Doc. #152.

On September 19, 2023, the Debtor timely filed a reply brief responding to the two objections. Doc. #157. However, the Debtor's arguments relied heavily on documents alluded to but which have not as of yet been filed with the court, including a forthcoming Amended Schedule I&J, a Debtor's Declaration, and a forthcoming motion to accept an unsolicited offer, subject to higher and better bids, to buy Debtor's interest in the Tulare County Property. *Id.*

On October 15, 2023, Debtor filed a *Supplemental Brief* averring that he has since filed an Amended Schedule I & J, the Debtor's Declaration, *and a Motion to Sell* his interest in the Property. Doc #181. *See also* Doc. ## 154, 158, and 168. Debtor avers that with the court's order granting in part Debtor's motion to avoid the People's judgment lien (*See* Doc. #183), there are no further impediments to confirmation. Doc. #181. No party has filed any subsequent responses.

Based on the foregoing, the court is inclined to GRANT the motion and confirm Debtor's *Second Modified Chapter 13 Plan.* Nevertheless, this hearing will proceed as scheduled so that the Trustee may confirm for the record that Debtor has satisfied all his objections to the current plan.

21. 23-10075-B-13 **IN RE: REFUJIO GUILLEN**
RSW-8

MOTION TO SELL
10-3-2023 [168]

REFUJIO GUILLEN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Refujio Guillen ("Debtor") seeks authorization to sell his 50% interest in certain real property located at 4919 Deer Creek mill Road, Pine Flat, CA ("Property"). Doc. #168 to Edward and Betty Holtsnider ("Buyers") pursuant to an unsolicited offer of $10,000.00 for Debtor's interest, subject to better and higher bids. Doc. #168.

Buyers currently hold a deed of trust in the Property in the amount of $352,572.92. Doc. #62. Debtor avers that the $10,000.00 will be paid to the Trustee in this case for the benefit of unsecured creditors. *Id.* Debtor further avers that, should the sale fail to go through, there are grounds for lifting the stay and allowing a foreclosure to proceed, in which case unsecured creditors will receive nothing. Doc. #168.

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

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

BACKGROUND

Debtor filed chapter 13 bankruptcy on January 18, 2023. Doc. #1. Michael H. Meyer ("Trustee") was appointed as trustee, and §341 meeting of creditors was conducted on March 7, 2023, and concluded on March 23, 2023. In the course of administering the estate, Trustee investigated the estate's assets, which included Property. On March 22, 2023, Trustee filed a *Motion to Dismiss* based in part on Debtor's failure to disclose the value and extent of Debtor's interest in the Property. Doc. #31. In Debtor's *Response*, he addressed the issue of the Property as follows:

> When the case was filed, Debtor believed that he was a 25% investor in property in Tulare County, without being on title. Subsequently, the People's attorney provided a copy of the note and deed of trust, which showed that Debtor is a 50% owner. Thereafter, Debtor received by mail a Notice of Balloon Payment Due, indicating that the note is due on July 1, 2023. Therefore, amended schedules have been filed; and the Plan still provides for paying the liquidation value, if any, to unsecured creditors. Because Debtor has not been making his share of the monthly mortgage payments or taxes for more than a year, and because he only invested $5,000.00 compared to the $125,000.00 his co-owner invested, the value of his interest is reduced and therefore set at $0. Nevertheless, the value of his interest will be determined shortly anyway, in that to avoid foreclosure, Debtor's co-owner will most likely have to sell or refinance the property. Whatever value Debtor's interest is determined to be, if any, will be paid to the Trustee for the benefit of unsecured creditors.

Doc. #50. The plan was subsequently amended twice, Doc. ## 84, 127. On October 13, 2023, Debtor Amended his Schedule A/B to reflect that he held a half interest (valued at $186,146.26) in the Property,

whose total value was $372,292.52. Doc. #179. Debtor asserted in the "Other Information" section of the entry regarding the Property that his net value was "probably nothing" because he had not been paying his share of the payments and taxes and that his share of the down payment on the Property was $120,000.00 less than his co-owner(s). *Id.* Debtor also asserted that he had received an unsolicited offer of $10,000.00 for his interest in the Property.

Debtor filed the instant *Motion to Sell* on October 3, 2023. Doc. #168. In his Declaration (Doc. #170), Debtor states that he has no knowledge of the value of the Property other than the 2017 purchase price of $500,000.00 of which he paid apparently paid only $190,000.00. The entire property is encumbered by a mortgage with an estimated balance of $375,000.00 (per Debtor's Declaration), and Buyers are also the mortgage holders. Debtor avers that if he does not sell his interest to Buyers, they can simply foreclose on the Property and are likely to succeed, in which case Debtor and the estate will take nothing. The moving papers assert that any other third-party buyer must be prepared to pay off the entire note as it is now all due and payable.

Debtor requests approval under 11 U.S.C. § 363(b) to sell his entire interest in the Property to Buyers for $10,000.00. Doc. #168.

DISCUSSION

Sale of Property

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Under section 1303, the debtor in a chapter 13 has the sale power. Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 N. Brand Partners v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer, 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998). The court will consider the debtor's justification for the sale in a similar light.

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). However, there is nothing in the record suggesting that these Buyers are insiders with respect to Debtor. Proposed Buyers are also the mortgage holders listed as such in the

Amended Schedule D and the master address list. Docs. #62; *See also Matrix of Creditors*. Debtor did not exempt Property in *Schedule C*. Doc. #20.

Thus far, Trustee has not indicated his assent or opposition to the sale. No proposed sale agreement has been included in the moving papers. Debtor avers that the Property is unencumbered except for the deed of trust held by Buyers, and that the entire $10,000.00 sale price will go to the estate. Doc. #168.

The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because the only alternative to the sale would appear to be foreclosure on the Property by the Buyers, which would achieve the same net effect except that instead of $10,000.00, the estate would receive nothing. The sale appears to be supported by a valid business judgment and proposed in good faith. If there are no objections at the hearing, the court intends to grant this motion.

Overbid Procedure

Should any party objecting at the hearing wish to overbid, the court will continue this matter to a future date, with any necessary overbid procedures incorporated into the *Order of Continuance.*

Waiver of 14-day Stay

Debtor has not requested a waiver of the 14-day stay.

Conclusion

If no party in interest objects at the hearing, this motion will be GRANTED. Debtor will be authorized to sell his interest in the Property to Buyers for $10,000.00, and the parties will be allowed to execute all documents necessary to effectuate the sale of the Property.

22. 23-11676-B-13 **IN RE: KATHERINE J SCONIERS STANPHILL**
SLL-2

MOTION TO CONFIRM PLAN
9-13-2023 [35]

KATHERINE J SCONIERS
STANPHILL/MV
STEPHEN LABIAK/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.

Katherine J. Sconiers Stanphill ("Debtor") seeks an order confirming the *First Modified Chapter 13 Plan* dated September 13, 2023. Doc. #35. The plan proposes that Debtors shall make 60 monthly payments of $2593.37 per month with an 100% dividend to allowed, non-priority unsecured claims. Doc. #39.

The plan also provides for secured creditors to be sorted into appropriate Classes and paid as follows:

(1) Right Start Mortgage (Class 1). $26,000.00 in arrears at 0% with an arrearage dividend of $433.33 per month and a monthly post-petition payment of $1,100.00.
(2) Wade Law (Class 2A). $24,159.05 at 0% with a monthly dividend of $402.66.

No party in interest timely filed written opposition.

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

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

23. 23-11981-B-13 **IN RE: SHIMEKA CONWAY**
MHM-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
10-4-2023 [16]

TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Sustained.

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

On October 4, 2023, Michael H. Meyer ("Trustee") brought this *Objection to Confirmation* of Debtor's Chapter 13 Plan filed on September 5, 2023. Doc. #16. On October 11, 2023, Shimeka Conway ("Debtor"), through counsel, submitted a *Response* in which she withdrew the plan in question and averred that an Amended Plan was forthcoming and would be set for a proposed hearing date of November 29, 2023. Doc. #24. Accordingly, Trustee's objection is SUSTAINED.

24. 23-11981-B-13 **IN RE: SHIMEKA CONWAY**
SKI-1

OBJECTION TO CONFIRMATION OF PLAN BY MERCEDES-BENZ VEHICLE TRUST
9-29-2023 [12]

MERCEDES-BENZ VEHICLE TRUST/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will prepare the order.

On September 29, 2023, Mercedes-Benz Vehicle Trust Successor in Interest to Daimler Trust ("Creditor") brought this *Objection to Confirmation* of Debtor's Chapter 13 Plan filed on September 5, 2023. Doc. #16.

Written opposition was not required. However, on October 11, 2023, Shimeka Conway ("Debtor"), through counsel, submitted a *Response* to the Trustee's *Objection to Confirmation* (*See disposition of Item #23, above)* in which she announced the withdrawal the plan in question. Debtor further averred that an Amended Plan was forthcoming and would be set for a proposed hearing date of November 29, 2023. Doc. #24. However, no such amended plan has been filed this as of this date.

While no similar response was presented (or required) in the instant matter, the court sees no need to proceed with a hearing on a matter likely to be rendered moot. The court has sustained the Trustee's plan objection in matter # 23 above. Accordingly, this objection will be overruled as moot.

25. 23-11790-B-13 **IN RE: RONALD HUTT**
MHM-1

MOTION TO DISMISS CASE
9-20-2023 [14]

MICHAEL MEYER/MV
ANH NGUYEN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors. Doc. #14. Debtor did not oppose.

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

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

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors. Doc. #16.

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

may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay.

In addition, the trustee has reviewed the schedules and determined that the debtor's assets are over encumbered and are of no benefit to the estate. Because there is no equity to be realized for the benefit of the estate, dismissal is in the best interests of creditors and the estate. Doc. #14.

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

26. 23-11391-B-13 **IN RE: DEREK WHITE AND LILIYA RUDAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-2-2023 [26]

JOEL WINTER/ATTY. FOR DBT.
$78.00 FILING FEE PAID ON 10/12/23

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

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

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

27. 23-11391-B-13 **IN RE: DEREK WHITE AND LILIYA RUDAN**
MHM-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
9-13-2023 [15]

JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

ORDER: The court will issue an order.

This objection was originally heard on September 27, 2023. Doc. #22.

Chapter 13 trustee Michael H. Meyer ("Trustee") objected to confirmation of the *[Second] Amended Chapter 13 Plan* filed by Derek White and Liliya Rudan ("Debtors") on September 13, 2023, under 11 U.S.C. § 1325(a)(1) and (a)(4) and under LBR 3015-1(i) because the plan fails the liquidation test and because Debtor has failed to file, serve, and set a required valuation motion. Doc. #15.

The court continued this objection to October 25, 2023. Docs. #24. Debtor was directed to file and serve a written response to the objection not later than fourteen (14) days before the continued hearing date, or file a confirmable, modified plan in lieu of a response not later than seven (7) days before the continued hearing date, or the objection would be sustained on the grounds stated in the objection without further hearing. *Id.*

Debtor neither filed a written response nor a modified plan. Therefore, Trustee's objection will be SUSTAINED on the grounds stated in the objection.

11:00 AM

1. 23-11332-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA NON-PROFIT CORPORATION**
23-1037

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-27-2023 [9]

CASTELLANOS V. TWILIGHT HAVEN
$350.00 FILING FEE PAID 9/28/23

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the $350.00 filing fee was paid on September 28, 2023. Accordingly, this order to show cause will be VACATED.

2. 23-11154-B-7 **IN RE: MATTHEW BOTWRIGHT**
23-1035 CAE-1

STATUS CONFERENCE RE: AMENDED COMPLAINT
9-14-2023 [10]

BOTWRIGHT V. UNITED STATES DEPARTMENT OF EDUCATION ET AL
JEFFREY ROWE/ATTY. FOR PL.

NO RULING.

3. 23-10886-B-7 **IN RE: LISA ANDERSON**
23-1031 CAE-1

STATUS CONFERENCE RE: COMPLAINT
7-21-2023 [1]

HAMILTON ET AL V. ANDERSON
LEAH ZABEL/ATTY. FOR PL.

NO RULING.

4. 23-10886-B-7 **IN RE: LISA ANDERSON**
23-1031 FW-1

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
9-25-2023 [9]

HAMILTON ET AL V. ANDERSON
GABRIEL WADDELL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

ORDER: Prepared by defendant's counsel and approved as to form by plaintiff's counsel.

I. INTRODUCTION.

The Plaintiffs ("Plaintiffs") in this adversary proceeding include Rick and Kristen Hamilton (collectively "the Hamiltons"), Stephen and Christina Thorns (collectively "the Thorns"), and Donald Horn and Judith Linda (husband and wife, collectively "the Horns"). The Defendant is Lisa Anderson, the debtor in the underlying Chapter 7 bankruptcy case. ("Anderson").

Plaintiffs brought the instant adversary complaint to contest the dischargeability of one of Anderson's debts arising from a judgment for damages obtained by the Hamiltons in the Madera County Superior Court ("the State Court Action" or "the State Court Judgment" as appropriate). The State Court Action concerned the applicability of certain covenants, conditions, and restrictions ("CC&Rs") that encumbered four lots with a shared water system in North Fork, California. The Complaint in the instant adversary alleges damages for breach of the CC&Rs and contains two counts. In Count 1, the Plaintiffs assert that the debt arising from State Court Judgment should be deemed nondischargeable as a "willful and malicious" injury under 11 U.S.C. § 523(a)(6). In Count 2, Plaintiffs further allege that the debt is nondischargeable under 11 U.S.C § 523(a)(16) because it represents "fees" arising from Anderson's interest in a homeowner's association.

On September 25, 2023, Anderson moved to dismiss both claims under Civil Rule 12(b)(6)(incorporated by Rule 7012). Doc. #9 Plaintiffs filed an opposition to which Anderson filed a reply. This matter is ripe for review.

After considering the arguments of all parties, the complaint, and the accompanying attachments, exhibits, and judicially noticed matters, the court rules for the reasons outlined below that:

1. Anderson's motion to dismiss should be GRANTED as to Hamilton and Hamilton's claims dismissed without leave to amend because that claim is barred by the doctrine of issue preclusion,
2. the motion is DENIED as to the claims of the Thorns and Horns because they were not parties to the original complaint brought

by Hamilton and so the Superior Court did not adjudicate their rights, and

3. the motion shall be GRANTED and the second claim for relief brought under § 523(a)(16) shall be dismissed without leave to amend as to all Plaintiffs because the allegations of the complaint liberally construed do not and cannot set forth facts supporting a non-dischargeability claim under that Code provision.

Accordingly, Defendant shall file an answer to the first claim of relief asserted by plaintiffs Horns and Thorns with 14 days of entry of the order on this motion.

II. STATEMENT OF FACTS[1] AND PROCEDURAL POSTURE.

A. THE BASIS OF THE STATE COURT JUDGMENT.

The parties to this adversary each own one of four lots near the Cascadel Heights area in the Sierra Foothills in North Fork, California. The lots are located close to one another and are served by a single water well. In 1985, the original owner of the four parcels recorded a Declaration of Restrictions with the Madera County Recorder which provided that the four parcels would share in the water produced by the well (25% for each lot) and that the owner of each lot would be responsible for the proportionate 25% share of all maintenance costs. The original declaration provided that if any action was brought to enforce the declaration, attorneys' fees could be awarded to the prevailing parties. The declaration states that the covenants run with the land.

The declaration was amended in 2015 to establish a capital replacement fund for maintenance and repairs of the well to which the lot owners would be required to contribute. The lot owners were also required to review the necessity of replacement funds annually, and any administrative fees would be shared equally among the lot owners. However, Anderson never signed the amendment.

In 2017, the lots, the structures on them, and the shared water system all suffered damage from the Mission Fire. Both before and after the fire, relations among the lot owners had grown acrimonious, and in 2019, Anderson caused a valve to be installed as part of the well's mechanisms that diverted well water to her residence to the exclusion of the plaintiffs. The Hamiltons commenced the State Court Action against Anderson in the Madera County Superior Court.

The Hamiltons amended their complaint at least twice.

Anderson also filed a cross-complaint in the State Court Action and added the Horns and the Thorns as cross-defendants. In her cross-complaint, Anderson sought a declaratory judgement concerning the binding nature of the CC&Rs and its application to her and her

[1]Except where stated otherwise, the facts of the case as outlined in this ruling are drawn from the Complaint (Doc. #1).

property. The Superior Court bifurcated the cross-complaint from the claims asserted by the Hamiltons.

In June 2021, the Superior Court ruled in the cross-complaint trial that the CC&Rs were valid and enforceable as amended. It also ruled that management of the four parcels affected by the covenants would be determined by vote with each parcel having one vote. That court further ruled that no one owner may alter, repair, or otherwise change any element of the water system without a majority of the parcels voting in favor of the alterations. The court determined that the Horns and the Thorns were prevailing parties on the cross-complaint and were entitled to attorneys' fees and costs, which the court awarded on September 7, 2021, in the amount of $41,650.00 to the Horns and $32,454.00 to the Thorns.

Bifurcated trial on the Hamiltons' complaint began in January 2023 with the operative pleading being the second-amended complaint. The theories raised included breach of contract, negligence, breach of the implied covenant of good faith and fair dealing, negligence per se, violations of California Water Code § 7000, nuisance per se, trespass to land, and violation of Health and Safety Code § 17920.3. Anderson subsequently filed a motion for nonsuit under Cal. Code Civ. Proc. ("CCP") 581c and a motion for judgment both of which the Superior Court deferred until conclusion of all the evidence.

The results of the trial were less than the Hamiltons' expectations. After hearing all the evidence, the court made extensive findings, most of which were to the Hamiltons' detriment. Among those findings, the court found that there was no evidence of causation or actual damages presented by the Hamiltons. The court also said that it found "no authority for [the Hamiltons] to recover damages…on behalf of all property owners, including the cost of trespass through the shared water system…" The court did find in the Hamiltons' favor on the first cause of action (breach of contract), holding that Anderson did owe $879.91 in administrative costs under the CC&R for a pump installation to repair damage to the water system. The court stated, "clearly this relates to Plaintiffs' first cause of action for breach of contract." The court granted the motion for non-suit as to all other causes of action because there was no causation or actual damages. However, pursuant to the terms of the CC&R, the Superior Court held that Anderson was liable for the Hamiltons' attorney's fees in the amount of $15,000.00. Combined with the judgment itself, Anderson owed the Hamiltons a total of $15,879.91.

The court found particularly compelling the testimony of the owner of the drilling company that made certain well repairs. His testimony was that all restoration and repair to the well was due to fire damage rather than the actions of Anderson. The court further ruled that any cost for removal of the valve installed by Anderson was speculative. The court also found that there was insufficient evidence for any claim of emotional distress asserted by the Hamiltons and that any lack of water the Hamiltons may have experienced was due to the fire and not to Anderson's conduct.

B. THE BANKRUPTCY AND THIS ADVERSARY.

On April 27, 2023, Anderson filed the underlying bankruptcy case. (*Case No. 23-01031,* Doc. #1) This adversary complaint followed, raising two counts. Count 1 argues that the debts owed to the Plaintiffs arose from willful and malicious injury, specifically conversion and thus are nondischargeable under § 523(a)(s). *Id.* Count 2 argues the debts constitute nondischargeable homeowner's fees as described in § 523(a)(16).

The Hamiltons and the Horns filed proofs of claim in the amount of $15,879.91 and $41,660.00, respectively. *Case No. 23-01031,* POC #1, #2. The Thorns have not filed a proof of claim. Prior to the commencement of the case, both the Horns and the Thorns obtained a judgment lien against Anderson's property, but the Hamiltons, in their proof of claim, concede that the debt owed to them is unsecured.

III. LEGAL ANALYSIS

A. Overview of the Parties' Arguments

Anderson, the movant in the instant *Motion to Dismiss*, argues that the Plaintiffs' claim for willful and malicious injury under § 523(a)(6) is barred by the doctrine of issue preclusion because of the findings of the Madera County Superior Court in the State Court Action against her. Anderson also argues that § 523(a)(16) is inapplicable because the well-sharing covenants do not establish a membership association, a cooperative corporation or a homeowners' association. More importantly, Anderson also argues that even if the provision was applicable, no relief is permissible under § 523(a)(16) because the obligations of defendant were incurred pre-petition.

Plaintiffs counter that the § 523(a)(6) is not barred because this adversary proceeding is not between all the same parties, and essential element for issue preclusion, because the Thorns and Horns were not parties to the Hamiltons' complaint. Further, Plaintiffs argue that the conversion theory asserted in the adversary complaint is distinct from the relief awarded for breach of contract by the Superior Court. Plaintiffs also assert that the Horns and Thorns were not in legal "privity" with the Hamiltons for purposes of issue preclusion. Finally, Plaintiffs argue that relief under § 523(a)(16) is available because certain costs owed by Anderson under the CC&R are separate and distinct from the judgment for contractual damages awarded the plaintiffs in the State Court Judgment.

B. The Standard for a 12(b)(6) Motion.

Dismissal for failure to state a claim upon which relief can be granted is appropriate if "a complaint [does not] contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable

inference that the defendant is liable for the misconduct alleged." *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*

"Generally, a court may not consider material beyond the complaint in ruling on a Civil Rule 12(b)(6) motion. However, a court may take judicial notice of matters of public record without converting a motion to dismiss to a motion for summary judgment as long as the facts noticed are not subject to reasonable dispute." *Intri-plex Tech., Inc. v. Crest Grp., Inc.*, 499 F.3d 1048, 1052, 9th Cir. 2007).

C. Issue Preclusion

1. The Hamiltons

The Hamiltons are barred by issue preclusion from asserting a claim for nondischargeability for willful and malicious injury.

Section 523(a)(6) excepts from discharge debts arising from willful and malicious injuries to an entity or its property. *Ormsby v. First American Title Company of Nevada (In Re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010). Separate consideration must be given to the willfulness and malice elements. *Carillo v. Su (In Re Su)*, 290 F.3d 1140, 1146-47 (9th 2002). For purpose of § 523(a)(6) a debt arises from a willful injury if the debtor subjectively intended to cause injury to the creditor or the debtor subjectively believed that injury was substantially certain to occur to the creditor as a result of her actions. *In Re Ormsby*, 591 F.3d at 1206. A debt arises from a malicious injury when it is based on "(1) a wrongful act, (2) done intentionally, (3) which necessarily cause injury, and (4) is done without just cause or excuse." *Id.* at 1207.

The problem for the Hamiltons is that the Madera County Superior Court found no causation between the acts committed by defendant/debtor and the injuries claimed by the Hamiltons. Issue preclusion applies when "(1) a claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding." *People v. Barragan*, 32 Cal. 4th 236, 252 (2004); *Harst v. State of California*, 770 F.2d 776, 778, (9th Cir. 1985).

There is no dispute here that the state court proceeding resulted in a final judgment in the Hamiltons' favor solely on the issues of breach of contract and attorneys' fees. The only issue raised by the Hamiltons in response to this motion is that their conversion claim in this adversary was not fully litigated in the state court proceeding. But labels of claims do not control the application of issue preclusion.

Once an issue is raised and determined, it is the entire issue that is precluded, not just the particular arguments raised in support of the prior case. *Yamaha Corp. of America v. United States*, 961 F.2d

245, 254 (D. C. Cir. 1992)(*cert denied*, 506 U.S. 1078 (1993)(emphasis in original). "If a party could avoid issue preclusion by finding some argument it failed to raise in the previous litigation, the bar on successive litigation would be seriously undermined." *Paulo v. Holder*, 669 F.3d 911, 918 (9th Cir. 2011). Identity of issues in the Ninth Circuit is to be considered by application of four factors:

(1) Is there a substantial overlap between the evidence or argument to be advanced in the second proceeding and the evidence or argument advanced in the prior proceeding?
(2) Is the new evidence or argument involved in the application in the same rule of law the same as the evidence or argument involved in the prior proceeding?
(3) Could pretrial preparation and discovery related to the matter presented in the first action reasonably be expected to have embraced the matter sough to be presented in the second?
(4) How closely related are the claims involved in the two proceedings?

Disimone v. Browner, 121 F. 3d 1262 (9th Cir. 1997). *See also* Rest. 2d of Judgments, § 27, cmt. c.

There is substantial overlap here because, as to Hamiltons' interest in the first claim of relief, the factual and legal issue raised in the State Court Action was the diversion of water. The same factual issue exists here, as in the previous action, Hamilton requested the same scope of damages covering the same factual losses. *See generally Howard v. City of Coos Bay*, 871 F.3d 1032, 1042 (9th Cir. 2017).

The same rule of law must be applied both in the Hamilton's conversion claim raised in this adversary and the claims already adjudicated by the Superior Court. All those claims require both causation for damages and actual damages. Other than reimbursement for well repair, no other damages were awarded by the Superior Court, and that court specifically found no causation or actual damages other than breach of contract damages.

Accordingly, the underlying issues are the same. *Compare Wenke v. Forrest Labs, Inc.*, 796 Fed. Appx. 383, 385 (9th Cir.2020).

It is more than reasonable to expect that discovery in the previous action would have included facts related to the diversion of water from the shared well. Indeed, the state court specifically found, based on the evidence presented, that the valve was installed on the well, but no damages could be awarded related to the removal of the valve because the evidence of such was speculative. The claims disposed of by the superior court included trespass to land which requires an intent to enter under California law, and the motivation of the trespasser is irrelevant. *Miller v. National Broadcasting Co.*, 187 Cal. App. 3d 1463, 1480 (1986). Likewise, the breach of a covenant of good faith and fair dealing also must have related to the installation of the valve. Here, the conversion claim raised in the instant adversary and the claims raised in the State Court

Action are closely related and both stem from the same factual predicate. *Wenke*.

All these factors support the identity of the issues in this action and the State Court Action, but these factors are not applied mechanically. *Syverson v. IBM Corp.*, 472 F.3d 1072, 1080-81 (9th Cir. 2007). Regardless, the factors as applied here show that as to the Hamiltons, they have had a full and fair opportunity to have the claim to water diversion and damages stemming therefrom tried by a court with jurisdiction.

Even the policies that courts in California must apply when invoking issue preclusion support this conclusion. Those policies implicated by California courts in cases where issue preclusion is raised include preservation of integrity of the judicial system; promotion of judicial economy; and protection of litigants from vexatious litigation. *Lucido v. Superior Court*, 51 Cal. 3d 335 (1990). There is a risk of conflicting judgments based on the same facts as to the Hamiltons' claim raised in the adversary. Furthermore, the Superior Court bifurcated the issues and essentially conducted two trials on the matter. Judicial economy is a compelling reason to apply issue preclusion in this case. Finally, it appears that these property owners do not peacefully coexist. There is accordingly some risk from vexatious litigation if issue preclusion is not applied here.

The issues at stake in the State Court Action and this action are identical, the issues were litigated and decided in the prior proceeding, and the Hamiltons had a full and fair opportunity to litigate those issues. The Superior Court decided the issue of causation and damages from water diversion on the merits. Those issues were necessarily decided as to the Hamiltons in the Madera County Superior Court. The damages awarded to the Hamiltons included $879.91 in damages for breach of contract, plus attorneys' fees, and breach of contract alone is not an intentional tort that implicates § 523(a)(6). Thus, the first claim for relief will be dismissed without leave to amend as to the Hamiltons.

2. The Remaining Plaintiffs.

In contrast, the conversion claims of the Horns and the Thorns are not precluded. The State Court Action was originally brought by the Hamiltons, with the other Plaintiffs only brought in through Anderson's cross-complaint which the Superior Court bifurcated from the Hamilton complaint. Thus, the Horns and the Thorns were not subject to any judicial adjudication relevant to their current conversion claim against Anderson.

Plaintiffs argue in response to the motion to dismiss that they are not privities of each other and should not be bound by the Superior Court damage judgment.Doc. #14. In reply, Anderson attempts to argue that, despite the fact that the Horns and Thorns were not parties to the Hamiltons' State Court Action, they were nevertheless in privity with the Hamiltons for several reasons. First, Anderson argues that because the conversion claim arose from the terms of the CC&R to which all the Plaintiffs were party, all of them are therefore in

privity of contract regarding the agreement which gave rise to the claims in Hamilton's state court complaint. Doc. #16.

Anderson also points to language from the Superior Court's opinion noting that Hamilton purported to represent the interest of the remaining Plaintiffs. *Id.* Anderson further argues that privity exists because the remaining Plaintiffs "were manifestly aware of the issues being litigated, being parties to Anderson's related cross-complaint" and that "Horns and Thorns allowed Hamilton to litigate the terms of the CC&Rs on their behalf." *Id.* This argument is belied, however, by the Superior Court's determination that there was no legal basis for the Hamiltons to recover damages on behalf of other parties.

Anderson also cites to *Taylor v. Sturgell*, 553 U.S. 880, 894 (2008) for the proposition that claim preclusion can be applied to a non-party which was adequately represented by "someone with the same interest who was a party to the suit." Doc. #16 at pg. 4. However, a closer review of *Taylor* reflects that the Supreme Court gave specific examples of such non-party applicability, including "properly conducted class actions" and "suits brought by trustees, guardians, and other fiduciaries." *Taylor,* 553 U.S. at 894. In the court's view a party pursuing legal remedies against a neighbor in a dispute that implicates the rights of other non-party neighbors simply does not constitute the "same interests" to the degree necessary to create privity.

"'Privity' is not merely a term that describes a close relationship between two entities. It implies that a judgment against one could have been used against the other, even though that entity was not a party to the judgment." *Grande v. Eisenhower Medical Center*, 13 Cal. 5th 313, 324-25 (2022). Privity requires the sharing of an identity or community of interest with adequate representation of that interest in the first suit, and circumstances such that the non-party should reasonably have expected to be bound by the first suit. *Id.* quoting *DKN Holdings LLC v. Faerber*, 61 Cal. 4th 813, 826 (2015).

Plaintiffs here claim that they were separate entities in the previous litigation. Though they allege in the complaint that they are part of a "homeowners' association" the Superior Court entered separate judgements for attorneys' fees in the Horns and Thorns favor. Further, taking judicial notice under Fed. R. Evid. 201 of the docket in this matter, judgments were entered in favor of the Horns and Thorns in June 2021 for attorneys' fees in defending the cross-complaint brought by defendant here concerning the enforceability of the CC&R's. Both the Horns and the Thorns separately recorded abstracts of judgment.

In addition, there is no evidence or arguments adequately supported by the defendant here that the Hamiltons "adequately represented" the Horns and Thorns interests, if any, in the Hamiltons action against defendant. That is mere speculation on the part of Anderson. Equally, there is no reasonable expectation on the part of the Thorns and Horns to be bound by the result in the State Court Action because the Superior Court itself noted in its ruling of no

authority for the Hamiltons to recover damages on behalf of all property owners.

It is Anderson who has the burden of establishing that the plaintiffs were in privity in the first action. *Grande* 13 Cal. 5th at 325, *Cits. Omitted*. It is the court's view that she has failed to do so. Accordingly, the motion to dismiss will be denied as to the claims of the Horns and the Thorns. Defendant shall file an answer to those claims within fourteen days of entry of the order.

D. Count Two under § 523(a)(16)

The second count raising claims under § 523(a)(16) will be dismissed without leave to amend as to all Plaintiffs because any amendment would be futile under the facts alleged.

The effect of discharge of defendant voids any judgment to the extent that such judgment is a determination of the *personal liability* of the defendant. § 524(a)(1)(emphasis added). The discharge acts as an injunction against the commencement or continuation of an action, the employment of process, or an act to collect, recover, or offset such debt as a personal liability of the debtor. Plaintiffs here argue that the covenants included under the CC&R and properly recorded run with the land and, accordingly, attorneys' fees awarded to Plaintiffs in the previous action should continue to be collected. That is not the law. Defendant can be discharged from personal liability for pre-petition debts unless a ground for excepting the debt from discharge exists. The ground asserted by the Horns and Thorns under § 523(a)(6) may be established at trial but not under § 523(a)(16).

Plaintiffs argue that Anderson should not be discharged from the attorneys' fee obligation and claim they arise from a common interest development and homeowners' association which brings them within the ambit of § 523(a)(16), thereby rendering that obligation nondischargeable. However, the court need not decide whether Plaintiffs are in fact an entity protected by that provision. Even if the relationship between the Plaintiffs and Anderson which governs their respective parcels and their obligations regarding the well can be viewed as one of the associations implicated by § 523(a)(16), it is irrelevant for the disposition of this count. This is so because the relevant code provision *only* excepts from discharge those debts that are for fees or assessment of qualifying entities "that become due and payable *after* the order for relief." § 523(a)(16)(emphasis added). That subsection also states that "nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising *before* entry of the order for relief in a pending or subsequent bankruptcy case." *Id. (*emphasis added).

The provisions of § 523(a)(16) are self-effectuating, and under § 523(c)(1), the court must determine whether a debt is excepted from discharge under specific Code provisions, namely § 523(a)(2),(a)(4), or (a)(6). Section 523(a)(16) is not on that list.

The attorney fee or repair obligations of Anderson, as awarded by the superior court, were awarded prior to the order for relief in this case. These fees and costs were a "claim" at that time, and if Anderson obtains a discharge, she will be discharged from any pre-petition obligation, provided there is no other ground to except that debt from discharge. Such a discharge would not include any debt that was due and payable after April 27, 2023, the petition date here.

That said, Section 523(a)(16) provides any post-petition assessments are nondischargeable "for as long the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit." Thus, any post-petition obligation remains the personal obligation of the defendant/debtor while she maintains ownership in the property at issue.

In the bankruptcy context, the Supreme Court has distinguished between secured *in rem* debts and unsecured *in personam* debts; *in personam* debts are dischargeable while a creditor retains *in rem* property interests. *Goudelock v. Sixty-01 Ass'n of Apt. Owners*, 895 F.3d 633, 640 (9th Cir. 2018). Plaintiffs' § 523(a)(16) claim seeks a judgment declaring prepetition fees as nondischargeable debts of the debtor, something the Code explicitly forbids.

Dismissal under Civ. Rule 12(b)(6) will be upheld if it is clear that no relief could be granted under any set facts that could be proved consistent with the allegations. *Canyon County v. Sengta Seeds, Inc.*, 519 F.3d 969, 975 (9th Circuit 2008). Under Civ. R. 9(f) allegations of time or place are material when testing the sufficiency of a pleading. The allegations of the complaint and the attachments thereto all establish that the obligations of defendant alleged in the complaint arose before the petition date. Since any amendment to the second claim would be futile under these facts, the defect cannot be cured by amendment. Thus, dismissal is proper. See, *Oki Semiconductor Co. v. Wells Fargo Bank, Nat. Ass'n*, 298 F.3d 768, 772 (9th 2002).

Plaintiffs' second claim for relief will be dismissed without leave to amend.

IV. Conclusion

For the foregoing reasons, the court hereby orders as follows:

1. Defendant's motion to dismiss Rick and Kristin Hamilton's first claim for relief under § 523(a)(6) will be GRANTED without leave to amend.

2. Defendant's motion to dismiss the first claim for relief under § 523(a)(6) will be DENIED as to the remaining Plaintiffs.

3. Defendant's motion to dismiss Plaintiffs' second claim for relief under § 523(a)(16) will be GRANTED as to all Plaintiffs without leave to amend.

4. Defendant shall file answer to the complaint (for which the only remaining count is the § 523(a)(6) claims of the Horns and the Thorns) within 14 days of entry of the order.