



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B – Courtroom #13
Fresno, California**

Hearing Date: Wednesday, October 30, 2024

Unless otherwise ordered, all matters before the Honorable René Lastreto II, shall be simultaneously: (1) **In Person** at, 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 or stated below.

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

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

Please also note the following:

- Parties in interest and/or their attorneys may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#). If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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. [24-12305](#)-B-13 **IN RE: PAMELA FLEMING**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR SERVBANK, SB
9-30-2024 [[21](#)]

SERVBANK, SB/MV
BENNY BARCO/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

DISPOSITION: Continued to December 11, 2024, at 9:30 a.m.

ORDER: The court will issue an order.

Creditor Servbank SB as attorney in fact, Castle & Cooke Mortgage ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed by Pamela Fleming ("Debtor") on August 23, 2024, on the following basis:

1. The plan does not fully provide for the curing of the arrearage on Creditor's claim.

Doc. #21.

This objection will be CONTINUED to December 11, 2024, at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the Objection not later than **14 days before the hearing**. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Any reply shall be served no later than **7 days before the hearing**.

If the Debtors elect 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 **7 days before the hearing**. If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

2. [24-12305](#)-B-13 **IN RE: PAMELA FLEMING**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
10-15-2024 [\[25\]](#)

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

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

DISPOSITION: Withdrawn.

No order is required.

On October 28, 2024, the Trustee withdrew the *Objection to Confirmation*. Accordingly, this Objection is WITHDRAWN.

3. [21-12407](#)-B-13 **IN RE: MANUELA BETTENCOURT**
[SDS-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SILVEIRA LAW
OFFICES FOR SUSAN D. SILVEIRA, DEBTORS ATTORNEY(S)
10-2-2024 [\[85\]](#)

SUSAN SILVEIRA/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.

Silveira Law Offices ("Applicant"), attorney for Manuela Bettencourt ("Debtor"), requests interim compensation in the sum of \$6,441.16 under 11 U.S.C. §§ 330 and 331. Doc. #85. This amount consists of \$6,412.50 in fees and \$28.66 in expenses from July 21, 2022, through October 1, 2024. *Id.*

Debtor executed a statement of consent dated October 1, 2024, indicating that Debtor has read the fee application and approves the same. Doc. #87 (*Exhib. D*).

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). 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.

Section 3.05 of the *Chapter 13 Plan* dated December 2, 2021, confirmed May 6, 2022, indicates that Applicant was paid \$1,000.00 prior to filing the case and, subject to court approval, additional fees of \$16,000.00 shall be paid through the plan upon court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Docs. #33, #56

This is Applicant's second interim fee application. Doc. #85. Applicant was previously awarded \$12,787.50 (less \$1,000.00 in fees already paid) in attorney's fees and \$411.82 (less \$344.00 already paid) in costs on August 24, 2024, for services and expenses from September 7, 2021, through July 22, 2022. Doc. #67.

Applicant's firm provided 17.10 billable hours at the following rates, totaling **\$6,412.50** in fees:

Professional	Rate	Billed	Total
Susan D. Silveira	\$375.00	17.10	\$6,412.00

Doc. #63. Applicant also incurred **\$28.66** in expenses, entirely from postage. *Id.* These combined fees and expenses total **\$6,441.16**.

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

Applicant's services here included, without limitation: fee applications; case administration; and work on an adversary proceeding (Navient Student Loans). Doc. #87. The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees. *Id.*

Accordingly, this motion will be GRANTED. Applicant shall be awarded **\$6,412.00** in fees as reasonable compensation for services rendered and **\$28.66** in reimbursement of actual, necessary expenses on an interim basis under 11 U.S.C. § 330 and § 331. The chapter 13 trustee will be authorized to pay Applicant **\$6,441.16** through the confirmed plan for services and expenses from July 21, 2022, through October 1, 2024. *Id.*

4. [24-12413](#)-B-13 **IN RE: ROYCE DUNCAN**
[LGT-2](#)

MOTION TO DISMISS CASE
9-27-2024 [[22](#)]

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

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. 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 Royce Duncan ("Debtor") that is prejudicial to creditors. Doc. #22. Debtor did not oppose.

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

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

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The Debtor failed to:

- Appear and testify at the initial 341 Meeting of Creditors on September 24, 2024.
- Provide the required documents/documentation.
- File a complete plan.
- Accurately file the following schedules and/or statements.
- File tax returns for the years 2021, 2022, and 2023.
- Complete the Credit Counseling Certificate prior to the bankruptcy filing date and is ineligible to be a debtor in a Chapter 13.

Doc. #24.

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.

Debtor has filed inaccurate and/or incomplete schedules. Accordingly, the trustee is unable to determine liquidation in this case.

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

5. [21-12317](#)-B-13 **IN RE: RYAN RHOADS**
[FW-4](#)

MOTION TO SELL AND/OR MOTION TO USE FUNDS TO PURCHASE
 REPLACEMENT VEHICLE
 10-2-2024 [\[57\]](#)

RYAN RHOADS/MV
 GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The moving party will prepare the order in accordance with the opinion below. The Chapter 13 Trustee shall approve the order as to form.

Ryan Christopher Rhoads ("Debtor") moves for entry of an order authorizing him to sell his 2020 Subaru WRX STI Sedan ("the Subaru") and, after paying off the balance owed to the creditor Subaru Motors Finance ("Creditor"), apply the balance towards a replacement vehicle to be purchased by Debtor's non-filing spouse ("the Spouse"). Doc. #57

et seq. The proposed replacement vehicle is a 2025 Kia Sorento ("the Kia") which Debtor and Spouse anticipate will cost approximately \$51,000.00 and have an estimated monthly payment of \$575.00. *Id.*

Under the operative plan, Creditor is a Class 4 creditor and is being paid directly by Debtor and outside the plan. Doc. #38. Debtor and Spouse both declare that this sale and purchase are necessary the Subaru is defective and will be too expensive to repair, and that Debtor needs a reliable vehicle for work. Docs. #59, #60. Debtor represents that Creditor has offered to purchase the Subaru for an amount sufficient to pay off the remaining balance owed on the Subaru (approximately \$18,024.98) while leaving Debtor and Spouse with net proceeds of approximately \$16,383.05 to apply towards the Kia. *Id.* Debtor avers that he is current on his direct payments on the Subaru. *Id.* Debtor and Spouse further aver that only the Kia will serve as collateral for new debt incurred and that only Spouse will be responsible for any such new debt. *Id.* Because Creditor is a Class 4 creditor who is being paid directly by Debtor, this transaction will not affect the feasibility of the plan.

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 in interest timely filed written opposition, and the defaults of all nonresponding parties will be entered. This motion will be GRANTED.

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

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

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). This sale is not to an insider.

Here, Debtor wishes to sell the Subaru to Creditor in an arms-length transaction. Debtor declares that the Subaru has recurrent and expensive mechanical problems and that he requires a reliable automobile to get to work. The only effect the sale will have on the plan is to satisfy the claim of Creditor, which is presently being paid directly in Class 4. The court finds that a sale of the Subaru to Creditor under these circumstances is in the best interests of the estate resulting from a fair and reasonable price, is supported by a valid business judgment, and appears to be proposed in good faith. Accordingly, the sale will be approved.

The motion also seeks authorization to purchase the Kia (or a comparable replacement vehicle) and apply the net proceeds from the sale towards that purpose.

LBR 3015-1(h)(E) allows the debtor, with court approval, to incur new debt, including the financing of a new vehicle, without written consent of the chapter 13 trustee (which was neither sought nor given in this instance). The parties declare that, while both Debtor and Spouse's names will be on the title to the replacement vehicle, only Spouse will be personally responsible for the loan. Docs. #59, #60. That said, California community property law will render this debt a community debt even if only the Spouse is a signatory to the financing documents:

Community property in California is "all property, real or personal, whenever situated, acquired by a married person during the marriage while domiciled in the state." *Calif*

Family Code Section 760. Community property is "liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt." Calif Family Code Section 910.

St. Lawrence Valley Dairy v. Saccheri (In re Saccheri), Nos. 09-17721-B-7, 09-01273-B, 2012 Bankr. LEXIS 6184, at *15 (Bankr. E.D. Cal. Apr. 6, 2012). Accordingly, the court must still assess under LBR 3015-1(h) the propriety of approving the incurrence of new debt even on the part of the Spouse.

Debtor and Spouse both declare that Debtor is current on all Chapter 13 plan payments and that the plan is not in default. Debtor's most recent Schedule I&J indicates that Debtor and Spouse can afford the estimated payment for the Kia (\$575.00 per month, which is less than the \$595.78 which Debtor has been paying directly for Subaru as a Class 4 claim), along with all future plan payments and projected living expenses. See Doc. #38 (*Confirmed Plan at 3.10*); Doc. #61 (*Amended Sched. I&J*). Debtor and Spouse declare that the new debt is a single loan incurred to purchase a vehicle that is reasonably necessary for the maintenance or support of the Debtor. Finally, the only security for the new debt will be the Kia.

After review of the attached evidence, the court finds that Debtor and Spouse will be able to make the monthly payment for the Kia. Debtor's Spouse is authorized, but not required, to incur new debt in order to purchase the Kia for \$51,000.00 at \$575.00 or another vehicle with comparable costs and payments. Should the budget of Debtor and Spouse prevent maintenance of current plan payment, Debtor shall continue making plan payments until the plan is modified.

The Chapter 13 Trustee shall approve the order as to form.

6. [19-13237](#)-B-13 **IN RE: MARGARITA NAVARRO PENA**

MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF
\$5,175.93 WITH DILKS & KNOPIK, LLC
10-7-2024 [\[48\]](#)

SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The movant will prepare the order.

Dilks & Knopik, LLC ("Movant") has filed the instant *Motion for Payment of Unclaimed Funds* and seeks to recoup the sum of \$5,175.93

from the unclaimed dividends paid into the court in the underlying Chapter 13 proceeding ("the Proceeding"). Doc. #48. The Proceeding was commenced on July 30, 2019, and is ongoing. Doc. #1; Docket generally. On July 31, 2024, the Trustee filed a notice indicating that Debtor had completed all plan payments. Doc. #39. On September 16, 2024, a Notice of Turnover of Unpaid Funds was filed, indicating that the sum of \$5,175.93 that was scheduled to be paid to Yorba Capital Management on Trustee Claim #17 was unclaimed and was to be turned over to the Treasury Registry. Doc. #42.

On October 7, 2024, Movant filed the instant motion, which was accompanied by what purports to be a chain of transfer between Yorba Capital Management ("Yorba," the entity originally entitled to the unclaimed funds) and Movant. Doc. #48. These documents reflect that account was transferred from Yorba to Cass Consulting Group, then to Cass & Associates, and finally to Movant. *Id.* Also, the docket contains a clerk's entry for *Notice of Intent to Transfer Claim* from Yorba Capital Management to Movant. Doc. #46.

The court is satisfied that Movant has demonstrated that entitlement to the unclaimed funds properly originally owed to Yorba.

The motion was filed on October 7, 2024, and, consistent with its internal procedures, the Clerk's Office generated a *Notice of Hearing on Application for Payment of Unclaimed Funds* on October 8, 2024. Docs. ##48-49.

Although this matter was set on 28 days' notice, the certificate of service was one generated by the clerk's office which contains none of the language pertaining to the requirement of a written response when a matter is set for hearing under LBR 9014-1(f)(1). In light of the Movant's reliance on court-generated documents in its filing, the court is inclined to overlook any procedural defects. The moving papers include a court-generated certificate of service which indicates that Movant properly served the U.S. Attorney's Office as required by 28 U.S.C. § 2042. Accordingly, this matter will proceed as scheduled, and any opposition may be presented at the hearing. In the absence of any such opposition, this motion will be GRANTED.

7. [24-11837](#)-B-13 **IN RE: DAVID/RICCI COMBS**
[JCW-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN
BY LANGLEY FEDERAL CREDIT UNION
8-13-2024 [\[18\]](#)

LANGLEY FEDERAL CREDIT UNION/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This matter was originally set for hearing on August 28, 2024. Doc.
#26. It was continued to September 25, 2024, and then continued again
to October 30, 2024. Doc. #49.

Langley Federal Credit Union ("Creditor") objects to confirmation of
the Chapter 13 Plan filed by David and Ricci Combs (collectively
"Debtors") on July 1, 2024, on the following basis:

1. The Plan proposes to treat Creditor's debt secured by a 2016
Dodge 1500 as a Class 2 re-amortized debt with an interest rate
of 4.49% on the secured claim. This interest rate is inadequate
to satisfy the requirements of Till and should be increased to
10.5%.

Doc. #18. On September 11, 2024, Debtors filed a Response stating that
"[t]he Debtors believe they can reach a stipulation with the creditor"
and that "[w]ith this stipulation, the Debtors believe this objection
can be resolved in the Order Confirming Plan." Doc. #40. While Debtors
"request" that Creditor withdraw its objection to confirmation, they
do not deny the basis of Creditor's Objection. *Id.*

Unless this matter is withdrawn, it will be heard as scheduled, and
this Objection will be SUSTAINED.

8. [24-11837](#)-B-13 **IN RE: DAVID/RICCI COMBS**
[JCW-2](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN
BY LANGLEY FEDERAL CREDIT UNION
8-13-2024 [\[22\]](#)

LANGLEY FEDERAL CREDIT UNION/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This matter was originally set for hearing on August 28, 2024. Doc.
#27. It was continued to September 25, 2024, and then continued again
to October 30, 2024. Doc. #49.

Langley Federal Credit Union ("Creditor") objects to confirmation of
the Chapter 13 Plan filed by David and Ricci Combs (collectively
"Debtors") on July 1, 2024, on the following basis:

1. The Plan proposes to treat Creditor's debt secured by a 2019
Hyundai Elantra as a Class 2 re-amortized debt with an
interest rate of 4.49% on the secured claim. This interest
rate is inadequate to satisfy the requirements of Till and
should be increased to 10.5%.

Doc. #18. On September 11, 2024, Debtors filed a Response stating that
"[t]he Debtors believe they can reach a stipulation with the creditor"
and that "[w]ith this stipulation, the Debtors believe this objection
can be resolved in the Order Confirming Plan." Doc. #40. While Debtors
"request" that Creditor withdraw its objection to confirmation, they
do not deny the basis of Creditor's Objection. *Id.*

Unless this matter is withdrawn, it will be heard as scheduled, and
this Objection will be SUSTAINED.

9. [24-11837](#)-B-13 **IN RE: DAVID/RICCI COMBS**
[LGT-1](#)

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

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

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

DISPOSITION: Withdrawn.

No order is required.

On October 23, 2024, the Trustee requested that the court dismiss the Objection to Confirmation. Accordingly, this matter is WITHDRAWN.

10. [24-12449](#)-B-13 **IN RE: REBECCA PAFFORD**
[LGT-1](#)

MOTION TO DISMISS CASE
10-10-2024 [\[28\]](#)

LILIAN TSANG/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The court intends to grant the motion to dismiss on the grounds stated in the motion.

ORDER: The minutes of the hearing will be the court's findings and conclusions. 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 Rebecca Pafford ("Debtor") that is prejudicial to creditors. Doc. #28.

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.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The Debtor failed to provide the trustee with the required documents and or documentation. Debtor failed to file a complete plan. The plan Debtor filed was blank. Doc. #30.

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.

Debtor has filed inaccurate and/or incomplete schedules. Accordingly, the trustee is unable to determine liquidation in this case.

In the absence of opposition, this motion will be GRANTED.

11. [24-12658](#)-B-13 **IN RE: GILBERT/REYNA VALLE**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF DRIVEWAY FINANCE CORPORATION
9-30-2024 [\[15\]](#)

REYNA VALLE/MV
PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below. The Chapter 13 Trustee should approve the order as to form.

Gilbert and Reyna Valle (collectively "Debtors") move for an order valuing a 2021 Toyota 4Runner TRD Off Road Premium ("Vehicle") with 42,000 miles at \$43,882.00 under 11 U.S.C. § 506(a). Doc. #17. Vehicle is encumbered by a purchase money security interest in favor of Driveway Finance Corporation ("Creditor"). Doc. #1 (*Sched. D*). DFC has not, thus far, filed a proof of claim, and the court finds Debtors' Schedule D to be confusing for the reasons outlined below. *Id.*

Debtor complied with Fed. R. Bankr. P. 3012(b) and 7004(b)(3) by serving Creditor's Registered Agent via First Class Mail on September 30, 2024 and at the address listed in Creditor's proof of claim on June 22, 2023. Doc. #19.

The court notes that, while the information contained in the Notice is correct as to the time and place of the hearing, it erroneously identifies the presiding judge as "Judge Neiman." As the Notice otherwise provides the correct information about the hearing and as no party has responded, the court will overlook this error, but the court recommends that, in the future, counsel for Debtors be more cautious in proofreading filings.

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 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.

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), which applies to all debtors under this title, states:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such

disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (2) states:

If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean 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, Debtor Gilbert Valle declares that Debtors incurred this purchase money loan in September 2021, which is more than 910 days preceding the September 12, 2024, petition date. Doc. #17. The court notes that the averments of the Debtors are the only evidence of this as Creditor has neither filed a proof of claim nor responded to this motion, and the Exhibits accompanying the motion do not include any loan documentation. Doc. #18. Accepting as true the unrebutted declaration of Mr. Valle as to when the Vehicle was purchased, the elements of § 1325(a) (*) are not met and § 506 is applicable.

Mr. Valle declares Vehicle has a replacement value of \$43,822.00. *Id.* In general, a 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).

This case is complicated, however, by what appears to be an error in Debtors' Schedule A/B which gives a fair market value for the Vehicle at odds with Mr. Valle's declaration. Specifically, Schedule A/B states that the amount of Creditor's claim for this loan is \$43,882.00, and the value of the collateral is \$44,011.00. Doc. #1 (*Sched. A/B, Line 2.3*). This appears to be a scrivener's error on the part of Debtors' counsel, but in the absence of any clear indication by Creditor as to the current amount owed, it precludes the court granting this motion outright.

No party in interest timely filed written opposition. Nevertheless, this matter will proceed as scheduled. The court is inclined to GRANT the motion conditioned on Debtors amending their Schedule A/B to correct the error alluded to above within fourteen (14) days after the hearing date. If such amendment is timely made, the motion will be GRANTED AND Creditor's secured claim will be fixed at \$43,882.00. 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. The Chapter 13 Trustee should approve the order as to form.

If Debtors fail to timely make the required amendments, this motion may be DENIED without prejudice.

12. [24-10060](#)-B-13 **IN RE: JENNIFER GITMED**
[HDN-2](#)

CONTINUED MOTION TO CONFIRM PLAN
4-16-2024 [\[36\]](#)

JENNIFER GITMED/MV
HENRY NUNEZ/ATTY. FOR DBT.

NO RULING.

13. [24-10060](#)-B-13 **IN RE: JENNIFER GITMED**
[HDN-4](#)

CONTINUED AMENDED OBJECTION TO CLAIM OF INTERNAL REVENUE
SERVICE, CLAIM NUMBER 1
7-26-2024 [\[84\]](#)

JENNIFER GITMED/MV
HENRY NUNEZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This hearing will be treated as a status conference during which the parties may present arguments on the issues of whether Debtor has established that her claimed deductions are allowable and whether the seizure of the affected property was timely. The court also wishes to hear from the parties as to whether an evidentiary hearing will be necessary and, if so, whether discovery is needed.

14. [24-10060](#)-B-13 **IN RE: JENNIFER GITMED**
[LGT-1](#)

CONTINUED MOTION TO DISMISS CASE
3-26-2024 [\[22\]](#)

LILIAN TSANG/MV
HENRY NUNEZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

15. [23-12478](#)-B-13 **IN RE: ZACARE BURRIS AND AMY RABAGO-BURRIS**
[SLL-4](#)

MOTION TO MODIFY PLAN
9-19-2024 [\[104\]](#)

AMY RABAGO-BURRIS/MV
STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted subject to agreed modifications.

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

Zacare Burris and Amy Rabago-Burris (collectively "Debtors") move for an order confirming the *Fourth Modified Chapter 13 Plan* dated September 19, 2024. Docs. #104, #108. Debtor's current plan was confirmed on March 25, 2024. Doc. #71.

The motion requests that the confirmed plan be modified as follows:

1. The plan payment will increase from \$2,703.00 to \$2,989.00 for months 11-60.
2. Debtors will pay a dividend of \$175.79 per month for months 11-60 to cure a post-petition arrearage of \$8,789.50 owed to Loan Depot.
3. Debtors will pay a dividend of \$75.02 per month for months 11-60 to cure a prepetition arrearage of \$4,042.77 owed to Loan Depot.
4. Debtors will pay a dividend of \$19.00 per month for months 11-60 to cure a post-petition mortgage fee of \$950.00 owed to Loan Depot.
5. Debtors remaining attorney fees of \$7,791.65 shall be paid from months 11-60 at \$155.83 per month.
6. The plan is otherwise unchanged.

Docs. #104, #109. On October 24, 2024, Debtors filed an Amended Schedule I&J reflecting a monthly net income of \$3,080.00, which is sufficient to pay the increased plan payment. Doc. #117.

Chapter 13 trustee Lilian Tsang ("Trustee") timely objected on the following grounds:

1. Based on Trustee's liquidation analysis, Debtors must increase the distribution to unsecured claims from 41.75% to 44.09%
2. The payment for prepetition arrearages must be increased to \$80.86 for months 11-60.
3. For the entire plan to be feasible, Debtors must increase their monthly plan payment to \$3,080.00 per month.]

4. The Debtors are currently delinquent in the amount of \$13,326.00, which the plan must provide for.

Doc. #112. Debtors replied, agreeing to adopt Trustee's proposed changes and agreeing to an increase of \$3,080.00, which is consistent with their most recent Schedule I&J. Docs. #115, #117.

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

This matter will be called and proceed as scheduled. The court will inquire as to whether Trustee's objections are resolved by the Debtors acquiescence to the proposed changes. If so, this motion may be GRANTED subject to the agreement of the Trustee and the Debtors.

If granted, the confirmation order shall include the docket control number of the motion, shall reference the plan by the date it was filed, and shall be approved as to form by Trustee.

16. [24-12317](#)-B-13 **IN RE: KHALID CHAOU**
[LGT-2](#)

MOTION TO DISMISS CASE
10-10-2024 [\[35\]](#)

LILIAN TSANG/MV

This matter was added to calendar after posting the original pre-hearing dispositions.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The court intends to grant the motion to dismiss on the grounds stated in the motion.

ORDER: The minutes of the hearing will be the court's findings and conclusions. 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 Khalid Chaoui ("Debtor") that is prejudicial to creditors. Doc. #35.

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.

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The Debtor failed to appear and testify at the initial 341 Meeting of Creditors on October 8, 2024. Debtor failed to provide the required documents/documentation. Doc. 37.

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.

Debtor has filed inaccurate and/or incomplete schedules. Accordingly, the trustee is unable to determine liquidation in this case.

In the absence of opposition, this motion will be GRANTED.

11:00 AM

1. [23-12426](#)-B-7 **IN RE: RAUL FERNANDEZ-MARTINEZ**
[24-1016](#) [FW-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
9-26-2024 [[22](#)]

FEAR V. FERNANDEZ-MARTINEZ, JR.
GABRIEL WADDELL/ATTY. FOR MV.

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.

Peter L. Fear, Chapter 7 Trustee ("Trustee" or "Plaintiff") seeks entry of a default judgment against Raul Fernandez-Martinez, Jr. ("Defendant") finding that judgment is granted to Plaintiff and against Defendant and that Defendant is ordered to turn over residential property located at 3032 W. Alamos Avenue, Fresno, CA 93722 ("the Property"). Doc. #22. The moving papers do not expressly the Defendant (Raul Fernandez-Martinez, Jr.) as the son of Debtor (Raul Fernandez-Martinez), though that seems to be a reasonable supposition.

Defendant has not opposed entry of default judgment.

This matter will be called and proceed as scheduled. The court is inclined to GRANT this motion.

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 Defendant nor any other party in interest has responded to the motion. Nevertheless, this matter will be heard as scheduled.

The court's docket reflects the following relevant filings and dates:

Doc. #1 (6/19/24)	The complaint is filed.
Doc. #6 (6/24/24)	The certificate of service of summons and complaint is filed. Defendant is served at the Property.
Docs. #12, #13 (8/30/24)	The request for entry of default and certificate of service are filed. Defendant is served at the Property.
Doc. #14 (9/9/24)	Entry of default and Order re: Default judgment procedures.
Doc. #22 <i>et seq</i> (9/26/24)	Motion/application for entry of default judgment.
Doc. #29 (9/26/24)	Certificate of service. Defendant is served at the Property.

See Docket generally.

JURISDICTION

The United States District Court for the Eastern District of California has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) because this is a case arising under title 11. This court has jurisdiction to hear and determine this matter by reference from the District Court under 28 U.S.C. § 157(a). This is a "core" proceeding under 28 U.S.C. § 157(b)(2)(A) (matters concerning the administration of the estate), (E) (order to turn over property of the estate), and (O) (other proceedings affecting the liquidation of the assets of the estate. Venue is proper pursuant to 28 U.S.C. § 1409(a) because this adversary proceeding arises in a bankruptcy case pending in this judicial district.

BACKGROUND

Debtor filed the underlying chapter 7 bankruptcy case on October 30, 2023, in Case No. 23-12426-B-7 (Bankr. E.D. Cal.). Main Doc. #1. The Property was listed in Debtor's Schedule A/B as an asset of the estate which Debtor owned solely and in fee simple. *Id.* Debtor valued the Property at \$300,700.00 and claimed no exemption in it. The Property is encumbered by a senior mortgage for \$101,188.00 and a deed of trust for \$169,507.47 (secured by the Property and by personal property assets). Determining that there was non-exempt equity in the Property, Trustee obtained approval to sell the Property, only to discover that Defendant was occupying, possessing, and controlling the Property without paying any rent and without any valid lease.

After Defendant refused to vacate the Property, Trustee initiated this adversary proceeding against him seeking turnover of the Property pursuant to 11 U.S.C. § 542(a). Trustee seeks no relief in this adversary other than ejectment of Defendant from the Property so that it can be sold for the benefit of the estate and unsecured creditors.

DISCUSSION

I.

Civ. Rule 55, as incorporated by Fed. R. Bankr. Pro. 7055, governs default judgments.

Obtaining a default judgment is a two-step process. See *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). First, the clerk of the court enters the default of the party [who has failed to plead or otherwise defend; the clerk or the court, depending on the nature of the plaintiff's claim, then enters a default judgment. Fed.R.Civ.P. 55(a) and (b), incorporated herein by Fed.R.Bankr.P. 7055.

Burkart v. Brack (In re Brack), Nos. 10-26347-D-7, 16-02037, DCN: CDH-001, 2016 Bankr. LEXIS 3625, at *2-3 (Bankr. E.D. Cal. Sep. 30, 2016).

Factors the court must consider include the following:

1. the possibility of prejudice to the plaintiff;
2. the merits of plaintiff's substantive claim;
3. the sufficiency of the complaint;
4. the sum of money at stake in the action;
5. the possibility of a dispute concerning material facts;
6. whether the default was due to excusable neglect; and
7. the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

In re Brack, 2016 Bankr. LEXIS 3625, at *3 (Bankr. E.D. Cal. Sep. 30, 2016).

"[A] default establishes the well-pleaded allegations of a complaint unless they are . . . contrary to facts judicially noticed or to uncontroverted material in the file." *Anderson v. Air West Inc. (In re Consol. Pretrial Proceedings in Air West Secs. Litig.)*, 436 F.Supp 1281, 1285-86 (N.D. Cal. 1977), citing *Thomson v. Wooster*, 114 U.S. 104, 114 (1885). Thus, a default judgment based solely on the pleadings may only be granted if the factual allegations are well-pled and only for relief sufficiently asserted in the complaint. *Benny v. Pipes*, 799 F.2d 487, 495 (9th Cir. 1986), *amended on other grounds*, 807 F.2d 1514 (9th Cir. 1987).

The court has broad discretion to require that a plaintiff prove up a case and require the plaintiff to establish the necessary facts to

determine whether a valid claim exists supporting relief against the defaulting party. Entry of default does not automatically entitle a plaintiff to a default judgment. *Beltran*, 182 B.R. at 823; *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) ("Rule 55 gives the court considerable leeway as to what it may require as a prerequisite to entry of a default judgment.").

II.

Turnover actions are governed by 11 U.S.C. § 542(a), which states in relevant part:

an entity ... in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542(a).

To prevail on a turnover action, the Trustee has the burden of proving by preponderance of the evidence that the estate is entitled to turnover. *Wolf v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1200-01 (9th Cir. 2012). The necessary elements to be proven are: (1) the property sought is in the possession, custody, or control of a noncustodial third party entity; (2) the property constitutes property of the estate; (3) the property is of the type that could be used, sold, or leased under § 363 or exempted under § 522 of the Bankruptcy Code, and (4) the property is not of inconsequential value or benefit to the estate. *In re Sipe*, No. 16-24559-B-13, 2018 Bankr. LEXIS 3387, at *11-12 (Bankr. E.D. Cal. Oct. 30, 2018).

From the evidence presented to the court, it appears (1) that the Property is currently in the possession of a third party, (2) that the Property is estate property, (3) the Property is of a type that could be sold under § 363 (and in fact would already be the subject of a § 363 sale but for its occupation by Defendant), and (4) the Property is clearly not of inconsequential value or benefit to the estate as a § 363 sale has the potential to realize significant proceeds for the estate.

Next, the court turns to consideration of the *Brack* factors.

1. The possibility of prejudice to the plaintiff. Continued retention of the Property by Defendant, who appears to have no ownership rights, no lease, and who is not paying rent greatly interferes with Trustee's efforts to sell the Property. This factor favors the Trustee.

2. **The merits of plaintiff's substantive claim.** As noted above, the facts adduced by the Trustee satisfy the elements of a § 542(a) turnover action. This factor favors the Trustee.
3. **The sufficiency of the complaint.** The court finds that Plaintiff's complaint is well-pleaded and sets forth plausible facts—not just parroted statutory or boilerplate language—that show that Plaintiff is entitled to the relief sought in the first and second claims for relief. The complaint sufficiently alleges with particularity facts that show that Defendant is not entitled to occupy the Property and should be ordered to turnover the Property to Trustee. This factor favors the Trustee.
4. **The sum of money at stake in the action.** While the precise figures are not clearly stated, it is clear that sale of the Property will generate significant proceeds for the estate. This factor favors the Trustee.
5. **The possibility of a dispute concerning material facts.** Upon entry of default, all well-pleaded facts in the complaint are taken as true, except allegations relating to damages, which Plaintiff does not seek in this adversary proceeding. Defendant has not advanced any arguments showing material facts in dispute. Given the sufficiency of the complaint and Defendant's default, there is no genuine dispute of material fact that would preclude a default judgment. This factor favors the Trustee.
6. **Whether the default was due to excusable neglect.** Defendant was properly served with the summons and complaint pursuant to Fed.R.Bankr.P. 7004. It is therefore unlikely that Defendant's failure to respond to the complaint was due to excusable neglect. This factor favors the Trustee.
7. **The strong policy underlying the federal rules of civil procedure favoring decisions on the merits.** The *Brack* court noted the general principle that “[c]ases should be decided upon their merits whenever reasonably possible.” *In re Brack*, 2016 Bankr. LEXIS 3625, at *11 (quoting *Eitel*, 782 F.2d at 1472. However, the court went on to state that:

[a]s compelling a factor as this may be, a decision on the merits is not reasonable in light of Defendant's complete inaction. Defendant's lack of a response renders a decision on the merits practically impossible. Thus, the ordinary preference to decide cases on the merits must yield to the granting of a default judgment.

Id. The court finds that same reasoning applicable here and concludes that the general policy in favor of deciding cases on the merits must yield to the other factors, all of which favor granting the motion and entering judgment in favor of Plaintiff.

CONCLUSION

Defendant failed to respond to the allegations in the complaint. Under Civ. Rule 8(d), failure to respond to Plaintiff's allegations in the complaint are deemed admitted. *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977). This matter will be called and proceed as scheduled. The court is inclined to GRANT this motion, enter judgment in favor of the Trustee, and order Defendant to vacate the premises of the Property and turn over the Property to the bankruptcy estate immediately.

2. [24-12751](#)-B-11 **IN RE: BIKRAM SINGH AND HARSIMRAN SANDHU**
[24-1035](#) [FRB-1](#)

MOTION FOR REMAND AND/OR MOTION TO APPOINT RECEIVER, MOTION
FOR PRELIMINARY INJUNCTION
9-27-2024 [\[8\]](#)

AMERICAN AGCREDIT, FLCA ET AL. V. KUMAR ET AL
MICHAEL GOMEZ/ATTY. FOR MV.
CLOSED 10/15/24

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

DISPOSITION: Dropped from calendar.

No order is required.

On October 15, 2024, the court granted the motion for remand. Doc. #90. On that same day, this adversary proceeding was closed. Accordingly, this hearing will be DROPPED from the calendar.

3. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[23-1024](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-11-2023 [\[1\]](#)

RUBIO V. MADERA COMMUNITY HOSPITAL
EILEEN GOLDSMITH/ATTY. FOR PL.

NO RULING.

4. [21-12473](#)-B-7 **IN RE: BLAIN FARMING CO., INC.**
[23-1040](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT
10-3-2023 [[1](#)]

SALVEN V. BLAIN
GABRIEL WADDELL/ATTY. FOR PL.
VACATED; CONT'D TO 12/18/24 PER ECF ORDER Doc. #21

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

DISPOSITION: Continued to December 18, 2024.

No order is required.

Pursuant to prior order of the court, this Pre-Trial Conference is
CONTINUED to December 18, 2024. *See Doc. #21.*

5. [23-12426](#)-B-7 **IN RE: RAUL FERNANDEZ-MARTINEZ**
[24-1016](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-19-2024 [[1](#)]

FEAR V. FERNANDEZ-MARTINEZ, JR.
GABRIEL WADDELL/ATTY. FOR PL.

NO RULING.