UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, November 10, 2021
Place: Department B – Courtroom #13
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. 20-10017-B-13 **IN RE: MARISSA GONZALES**
PBB-3

MOTION TO MODIFY PLAN
9-30-2021 [53]

MARISSA GONZALES/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Marissa Jae Gonzales ("Debtor") seeks an order confirming the Third Modified Chapter 13 Plan, which provides that Debtor will resume payments beginning October 2021 and defer missed payments to the end of the plan term. Doc. #53.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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 it shall reference the plan by the date it was filed.

2. 21-10418-B-13 **IN RE: SAMUEL/ANGELA BERMUDEZ**
SL-2

MOTION TO MODIFY PLAN
10-5-2021 [30]

ANGELA BERMUDEZ/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Samuel Bermudez and Angela Selen Bermudez ("Debtors") seek an order confirming their First Modified Chapter 13 Plan. Doc. #30.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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 it shall reference the plan by the date it was filed.

3. 21-11939-B-13 **IN RE: PARGAT DHALIWAL**
CZD-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-19-2021 [35]

BMO HARRIS BANK N.A./MV
D. GARDNER/ATTY. FOR DBT.
CASEY DONOYAN/ATTY. FOR MV.

NO RULING.

BMO Harris Bank, N.A. ("Movant") seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit Movant to exercise its rights and remedies with respect to a 2016 Volvo VNL-Series: VNL64T/780 SLRP 189" BBC CONV CAB SBA TRACTOR 6X4 ("2016 Volvo") and a 2018 Volvo VNL-Series: VNL64T/780 SLR 189" BBC CONV CAB SBA TRACTOR 6X4 ("2018 Volvo;" collectively "Property"). Doc. #35. Movant also requests waiver of the 14-day stay described in Fed. R. Bankr. P. 4001(a)(3).

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion.

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.

First, the court notes that the motion does not comply with LBR 4001-1(b), which specifies additional procedures applicable to motions for relief from stay in chapter 13 cases. If the motion alleges that the debtor or the trustee has failed to maintain post-petition payments on an obligation secured by personal property, the motion shall (a) include a verified statement showing all post-petition payments or other obligations that have accrued, and all payments received post-petition, the dates of the payments, and the obligation to which each was applied; (b) state whether a contract or nonbankruptcy law requires the debtor to be given a statement, payment coupon, invoice, or other document and whether the document was sent to the debtor or trustee; and (c) state whether the debtor or the trustee was advised prior to the filing of the motion of the alleged delinquency and given an opportunity to cure it. LBR 4001-1(b)(1).

If the motion alleges that the debtor has failed to make plan payments to the chapter 13 trustee, the motion shall include in the motion a certification that the movant has conferred with the trustee before the motion was filed and confirmed that the alleged delinquency under

the plan was outstanding within fourteen days of the filing of the motion. LBR 4001-1(b)(2). If the movant does not confer with the trustee, the motion shall detail the attempts made to confer with the trustee or explain why no such attempt was made.

Here, the motion omits the statement or certification required under LBR 4001-1(b). However, because Movant alleges that the Debtor has not provided proof of insurance and has sold, assigned, or subleased the Tractors to third parties without authorization, this matter will proceed as scheduled.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

On March 29, 2016, Movant financed Pargat Singh Dhaliwal's ("Debtor") purchase of the 2016 Volvo pursuant to a written loan and security agreement. Docs. #39; #40 Ex. 1. Under the terms of the agreement, Debtor agreed to make 48 monthly installment payments of $3,483.58 beginning June 1, 2016 due on the first of each month. *Id.* Debtor agreed that he would not sell, lend, encumber, pledge, transfer, secrete, or dispose of the 2016 Volvo without Movant's prior written consent, as well as maintain insurance for the actual cash value of the 2016 Volvo for the life of the agreement.

On March 23, 2018, Movant financed the purchase of the 2018 Volvo on similar terms as the March 29, 2016 agreement. Docs. #39; 40, Ex. 5. The terms of the second agreement to which Debtor agreed required Debtor to make 48 monthly installment payments of $3,702.69 beginning May 7, 2018 due on the first of each month. *Id.* Debtor agreed that he would not sell, lend, encumber, pledge, transfer, secrete, or dispose of the 2018 Volvo without Movant's prior written consent, as well as maintain insurance for the actual cash value of the 2018 Volvo for the life of the agreement.

On May 1, 2020, Debtor defaulted under the terms of the 2016 Volvo loan agreement by failing to make the monthly installment payment. Debtor defaulted on the second agreement for the 2018 Volvo on October 7, 2020 Doc. #39.

As of the petition date, the balance due and owing for the 2016 Volvo was $20,760.10, which consists of an unpaid principal of $14,017.46, $2,134.33 in interest, $348.36 in late charges, and $4,259.95 in fees and costs. The balance due and owing for the 2018 Volvo was $71,296.14, which consists of an unpaid principal of $64,275.89, $6,464.86 in interest, and $555.39 in late charges.

Per his schedules, Debtor valued the 2016 Volvo at $15,000.00 and the 2018 Volvo at $29,500.00. Doc. #21, *Sched. A/B*. The court notes that Debtor has a pending motion to confirm chapter 13 plan scheduled for December 8, 2021. DMG-2. If confirmed, Movant would receive payment under the chapter 13 plan as a Class 2(B) creditor. Doc. #50, § 3.08.

Bryan J. Schrepel, Movant's Litigation Specialist, declares that Debtor breached the agreement because, without prior consent, Debtor leased, sold, or assigned the 2016 Volvo to PSD Transport, Inc. ("PSD"). Doc. #39, ¶ 15. PSD is 100% owned by Debtor. Doc. #30, *Sched. A/B*, ¶ 19. However, Debtor has not provided proof of insurance in which Movant is listed as an additional insured or a loss payee. Doc. #40, Ex. 4.

Casey Z. Donoyan, Movant's attorney, declares that Movant learned at the 341 meeting of creditors, that Debtor leased, sold, or assigned the rights to the 2018 Volvo to his friend, Gurmail Singh, Debtor does not operate the 2018 Volvo, and Debtor does not make any profit from leasing it to his friend. Doc. #38, ¶ 2. Although the 2018 Volvo is purportedly insured, Movant has not received any information confirming this allegation. *Id.* This is reaffirmed by the declaration of Bryan Schrepel. Doc. #39, ¶¶ 29-30.

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor leased, sold, or assigned his rights to the (1) 2016 Volvo to PSD; (2) 2018 Volvo to his friend, Gurmail Singh. Further, Debtor has failed to provide to Movant adequate proof of insurance naming Movant as an additional insured or loss payee for both Tractors. Although Debtor is also delinquent at least $20,760.10 for the 2016 Volvo and $71,296.14 for the 2018 Volvo, Movant did not comply with the additional procedures applicable to motions for relief from stay in chapter 13 cases in conformance with LBR 4001-1(b).

The court also finds that Debtor does not have any equity in Property and Property is not necessary to an effective reorganization. Debtor valued the 2016 Volvo at $15,000 and the 2018 Volvo at $29,500, but the amounts owed to Movant are $20,760.10 and $71,296.14, respectively. Further, Debtor has leased, sold, or assigned the 2018 Volvo to a third party without Movant's consent, so it does not appear to be necessary for an effective reorganization.

Written opposition was not required and may be presented at the hearing. This matter will be called as scheduled. In the absence of opposition at the hearing, the court is inclined to GRANT the motion pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) may be ordered waived because Property consists of two vehicles that are depreciating assets.

4. 19-10641-B-13 **IN RE: MARTIN FLORES**
PBB-2

MOTION TO MODIFY PLAN
9-24-2021 [73]

MARTIN FLORES/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 15, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

Martin L. Flores ("Debtor") seeks an order confirming his Second Modified Chapter 13 Plan. Doc. #73.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed confirmation pursuant to (i) 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the plan and comply with the plan; and (ii) § 1322(a) because the plan fails to provide for submission of all or such portion of future earnings or other income to the supervision and control of Trustee to execute the plan. Doc. #82.

This matter will be CONTINUED to December 15, 2021 at 9:30 a.m.

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 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).

First, Trustee objects because the moving papers and supporting exhibit document indicate that Debtor's home loan with Class 1 creditor Pennymac Loan Services, LLC ("Pennymac") was modified. Doc. #77, Ex. A. The plan proposes a new ongoing mortgage payment of $1,666.51 and an arrearage payment of $450.00 per month. Doc. #75. Trustee objects because Pennymac has not filed an amended claim or

notice of mortgage payment change and Debtor has not filed a motion to approve loan modification. Doc. #82.

The last notice of mortgage payment change was filed on June 8, 2021 and called for an ongoing payment of $1,812.67 beginning July 1, 2021, which is $146.16 more than the proposed plan payment. If the plan is confirmed as is, Debtor will incur a delinquency pursuant to the most recent notice of mortgage payment change. Trustee is also unaware whether Pennymac has approved the loan modification. If so, then Trustee states that the arrears would be moved to the end of the loan and Debtor would be current. And if the loan modification has not been approved, then the Class 1 mortgage payment would be $1,812.67, rather than $1,666.51, and Debtor would need at least $2,465.00 in disposable income before the plan becomes feasible.

Second, Trustee states that if the loan modification agreement has been approved, and the pre-petition arrears due to Pennymac have been moved to the end of Debtor's loan, then the plan no longer provides for submission of all of Debtor's future earnings that would otherwise be available for the benefit of unsecured creditors. *Id.* Based on Debtor's monthly net income of $2,315.60 and if the arrears have in fact been moved to the end of the loan, Trustee states that Debtor could pay approximately $14,500.00 (45.67%) to his unsecured creditors. *Id.*; Doc. #80, *Sched. J*.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the Debtor shall file and serve a written response not later than December 1, 2021. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee shall file and serve a reply, if any, by December 8, 2021.

If the Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than December 8, 2021. If the Debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

5. 17-10245-B-13 **IN RE: MICHAEL/CAROL LUSK**
AP-1

MOTION TO APPROVE LOAN MODIFICATION
9-29-2021 [69]

WELLS FARGO BANK, N.A./MV
PETER BUNTING/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

NO RULING.

Wells Fargo Bank, N.A. ("Movant") moves for an order authorizing Michael Lloyd Lusk and Carol Ann Lusk ("Debtors") to enter into a loan modification agreement with respect to a first deed of trust encumbering real property located at 1543 East Beech Drive, Visalia, CA 93292 ("Property"). Doc. #69. The modification agreement provides for capitalizing arrears into the principal balance including unpaid and deferred interest, fees, escrow advances, and other costs, but excludes late charges, valuation, property preservation, and charges not permitted under the modification agreement. Doc. #70, Ex. 1. The modified loan will reduce monthly payments from $1,299.10 to $816.25, plus a $376.47 monthly escrow payment, extend the maturity date of the loan from May 1, 2033 to September 1, 2061, and retain the same 5.5% interest.

No party in interest timely filed written opposition. This matter will be called as scheduled.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The failure of the creditors, the debtors, 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 motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest 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).

LBR 3015-1(h)(1)(C) allows a debtor, *ex parte* and with court approval, to refinance existing debts encumbering the debtor's residence if the written consent of the chapter 13 trustee is filed with or as part of the motion. The trustee's approval is certification to the court that: (i) all chapter 13 plan payments are current; (ii) the chapter 13 plan is not in default; (iii) the debtor has demonstrated an ability to pay all future plan payments, projected living expenses, and the refinanced debt; (iv) the new debt is a single loan incurred only to refinance existing debt encumbering the debtor's residence; (v) the only security for the new debt is the debtor's existing residence; (vi) all creditors with liens and security interests encumbering the

debtor's residence will be paid in full from the proceeds of the new debt and in a manner consistent with the plan; and (vi) the monthly payment will not exceed the greater of the debtor's current monthly payments on the existing debt, or $2,500.

If the trustee will not give consent, or if a debtor wishes to incur new debt on terms and conditions not authorized by subsection (h)(1)(C), the debtor may still seek court approval under LBR 3015-1(h)(1)(E) by filing and serving a motion on the notice required by Federal Rule Bankruptcy Procedure ("Rule") 2002 and LBR 9014-1.

As stated, a motion for approval of a loan modification agreement is to be filed by the *debtor* under LBR 3015-1(h)(1)(C) and (E), not a creditor. The Movant does not appear to have standing here under the local rules.

Outside of the loan modification approval requirements in the local rules, nothing in the Federal Rules of Bankruptcy Procedure would otherwise require approval. *Stewart v. Bank of Am., N.A.*, No. 16-cv-05322-JST, 2016 U.S. Dist. LEXIS 179971, at *15 (N.D. Cal. Dec. 28, 2016), *accord.*, *In re Moore*, No. 12-40456-EJC, 2015 Bankr. LEXIS 3155, at *3 (Bankr. S.D. Ga. Sep. 18, 2015) ("Although there does not appear to be any Code provision or Bankruptcy Rule that requires judicial approval of the terms of a loan modification, the Court recognizes a few situations in which a loan medication agreement could be properly reviewed and approved by the court."); *In re Wofford*, 449 B.R. 362, 364 (Bankr. W.D. Wis. May 23, 2011) ("[A] loan modification *could* be reviewed by a court in the context of plan confirmation, or as a resolution of an actual dispute . . . there does not appear to be any applicable law or rule that *requires* judicial approval of the terms of the loan modification itself.") (emphasis in original); *In re Smith*, 409 B.R. 1, 4 (Bankr. D.N.H. 2009).

LBR 1001-1(f) allows the court *sua sponte* to suspend provisions of the LBR not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding. This motion will be called as scheduled to inquire whether the Debtors support modification. If so, the court may overlook the procedural defect under LBR 1001-1(f) in this instance.

The modification contains the following terms:

	Original Loan	Modified Loan
Principal balance:	$167,435.67[1]	$158,259.35
Monthly payment:	$1,299.10	$816.25 + $375.47 escrow[2]
Maturity date:	May 1, 2033	September 1, 2061
Term:	360 months	480 months
Interest:	5.50%	5.50%

Movant has not indicated whether (i) all plan payments are current; (ii) the plan is not in default; (iii) Debtors' have demonstrated an ability to pay all future payments, projected living expenses, and the

modified loan; (iv) the debt is a single loan incurred only to refinance the existing debt encumbering the Debtors' residence; (v) the only security for the new debt is the debtor's existing residence; and (vi) all creditors with liens and security interests encumbering the residence are paid in full from the proceeds of the new debt and consistent with the chapter 13 plan.

However, the modified loan does have a slightly lower monthly payment than the original loan, even though the loan term is extended approximately 28 years.

This matter will be called as scheduled to inquire whether any parties in interest oppose the loan modification. Any order confirming the modification shall provide that Debtors are authorized, *but not required*, to enter into the loan modification agreement with Movant.

---

[1] This is the amount due as of the petition date.
[2] Movant indicates that $376.47 will be due monthly for escrow payments beginning October 1, 2021 for the first 60 months of the loan term. By this court's calculation, Debtors' total monthly payment will be approximately $1,191.72.

6. 18-12246-B-13 **IN RE: CHARLES/MICHAELA GIBBS**
DRJ-3

MOTION TO MODIFY PLAN
9-27-2021 [72]

MICHAELA GIBBS/MV
DAVID JENKINS/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.

Charles Henry Gibbs and Michaela Raya Gibbs ("Debtors") seek confirmation of their Second Modified Chapter 13 Plan. Doc. #72.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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 it shall reference the plan by the date it was filed.

7. 18-14454-B-13 **IN RE: ESEQUIEL/ROXANNE PEREZ**
MAZ-1

MOTION TO APPROVE LOAN MODIFICATION
9-30-2021 [60]

ROXANNE PEREZ/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Esequiel R. Perez and Roxanne D. Perez ("Debtors") request authorization to enter into a loan modification agreement concerning the mortgage secured by their residence. Doc. #60.

First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

A Motion to Value Collateral was previously filed by Debtors on February 12, 2019 (Doc. #27) and granted on April 5, 2019. Doc. #46. The DCN for that motion was MAZ-1. This motion also has a DCN of MAZ-1 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

Second, the motion and declarations do not establish all of the elements required to refinance an existing home loan pursuant to LBR 3015-1(h)(1)(C) or (E). The next attempt should satisfy all requirements outlined in LBR 3015-1(h)(1)(C)(i) through (vii).

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

8. 21-10061-B-13 **IN RE: JACINTO/KAREN FRONTERAS**
GEG-4

MOTION TO CONFIRM PLAN
9-16-2021 [123]

KAREN FRONTERAS/MV
GLEN GATES/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.

Jacinto Fronteras and Karen Jo Fronteras ("Debtors") seek an order confirming their First Amended Chapter 13 Plan. Doc. #128. Debtors also have a pending objection to claim in matter #9 below and a motion to sell real property subject to higher and better bids in matter #10 below. GEG-5; GEG-6.

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 it shall reference the plan by the date it was filed.

9. 21-10061-B-13 **IN RE: JACINTO/KAREN FRONTERAS**
GEG-5

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 4
9-27-2021 [142]

KAREN FRONTERAS/MV
GLEN GATES/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.

Jacinto Fronteras and Karen Jo Fronteras ("Debtors") object to Proof of Claim No. 4 in the sum of $5,902.00 filed by the Internal Revenue Service ("IRS") on February 23, 2021.[3] Debtors seek to have the claim disallowed in its entirety.

No party in interest timely filed written opposition. This objection will be SUSTAINED.

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(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 sustaining of the objection. *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 objecting party has done here.

The IRS claim asserts an unsecured balance of $5,902.00 for the 2020 tax year. Claim #4-1. The claim is an estimate that is based on the Debtors' previous tax filings and income. Joint debtor Karen Jo Fronteras declares that Debtors have filed their 2020 taxes and received a refund of $3,850.00. Doc. #145. Debtors did not owe any back taxes or current taxes due for the year 2020. *Id.* This is reflected in Debtors' amended schedules filed July 8, 2021, indicating receipt of the $3,850.00 federal tax refund. Doc. #63, *Am. Sched. A/B.* Though the original schedules filed with the petition did not list the

refund, it is listed in the previous iteration of Schedule A/B filed June 28, 2021. Docs. #1; #52, *Sched. A/B*.

Debtors claim that the estimate was filed prior to completion of their taxes and payment of the tax refund, so the estimated tax claim was both erroneous and prematurely filed. Doc. #142. Debtors' attorney, Glen E. Gates, declares that he attempted to contact a local IRS agent. Doc. #144. Mr. Gates spoke with a representative in another office out of state, was referred to a local IRS agent, and left a message with his name and phone number requesting that the claim be either withdrawn or amended. Having not received a communication in response, Debtors filed this objection seeking to disallow the IRS claim in its entirety.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

Here, Debtors have established that the IRS claim was filed prematurely. On the face of the claim, it is an estimate based on available information because no return had been filed. Debtors eventually filed their return and received a $3,850.00 tax refund. Debtors assert that they do not owe any back or current taxes.

The IRS was properly served and did not timely file opposition to this objection. Accordingly, this objection will be SUSTAINED. Proof of Claim No. 4 filed by the IRS on February 23, 2021 will be disallowed in its entirety.

---

[3] The IRS was properly served in accordance with Federal Rule of Bankruptcy Procedure 7004(b)(5) on September 27, 2021. Doc. #147.

10. 21-10061-B-13 **IN RE: JACINTO/KAREN FRONTERAS**
GEG-6

MOTION TO SELL
10-5-2021 [148]

KAREN FRONTERAS/MV
GLEN GATES/ATTY. FOR DBT.

TENTANTIVE RULING: This matter will proceed as scheduled for higher and better bids, only.

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.

Debtors Jacinto Fronteras and Karen Jo Fronteras ("Debtors") seek authorization to sell a 100% fee simple interest in unincorporated real property located in Madera County, California, bearing APN: 061-460-031-000 ("Property"), to Paul A. Russell and Geraldine Russell ("Proposed Buyers") for $25,000.00, subject to higher and better bids. Doc. #148.

No party in interest timely filed written opposition. This motion will be GRANTED and called as scheduled for higher and better bids, only.

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). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. 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. § 363(b)(1) allows the 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 estate property under § 363(b).

The property to be sold is the estate's interest in Property, which is unincorporated real property located in Madera County. Property is listed in the schedules with a value of $25,000.00. Doc. #63, *Am. Sched. A/B*. It is encumbered by a deed of trust in favor of Patrick Kennedy in the amount of $18,000.00. *Id.*, *Am. Sched. D*. Property is not exempted for any amount. Doc. #39, *Am. Sched. C*.

Debtors included a Seller's Estimated Closing Statement and Sale Escrow Instructions prepared by Fidelity National Title Company. Docs. #152, Exs. B, C. Under the terms of the sale, Proposed Buyers will pay $25,000.00 cash. The $18,000 deed of trust in favor of Patrick Kennedy will be paid through escrow. The net sale proceeds of $6,704.41 will be paid directly to chapter 13 trustee Michael H. Meyer ("Trustee") and used to pay a portion of unsecured creditors in accordance with Debtors' amended chapter 13 plan. No sales commissions are associated with the sale, but $88.68 in property taxes and an additional $206.91 in defaulted taxes to Kings County Department of Child Support Services ("KCDCCS") will be paid through escrow. Docs. ##150-51. The sale is itemized as follows:

Sale price of Property	$25,000.00
Property taxes	- $88.68
Payoff to Patrick Kennedy (estimated)	- $18,000.00
Defaulted taxes to KCDCCS	- $206.91
Net to the estate	**= $6,704.41**

Doc. #152, Ex. 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 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 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 trustee's business judgment is to be given great judicial deference.'" *Id.* citing *In re Psychometric Sys.*, 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). Here, the motion states that Proposed Buyers are a completely unrelated third party. Doc. #148, ¶ 4. Proposed Buyers are neither listed in the master address list nor Schedules D, E/F, G, or H. Docs. #1, *Sched. E/F, G, H*; #4; #63, *Sched. D*. Proposed Buyers do not appear to be insiders.

The sale appears to be in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid exercise of Debtors' business judgment, and proposed in good faith. The sale subject to higher and better bids will maximize estate recovery and yield the best results. There are no objections or opposition to the sale.

Accordingly, this motion will be GRANTED. The hearing will proceed for higher and better bids only. Debtors are authorized to sell Property to the highest bidder as determined at the hearing and return any and all deposits of unsuccessful bidders. Further, Debtors are authorized to pay the expenses of sale itemized in the Estimated Closing Statement and execute all documents necessary or convenience to complete the transaction.

The motion does not request, nor will the court authorize, the sale free and clear of any liens or interests. All encumbrances will be paid through escrow.

Any party wishing to overbid must, at least seven days prior to the hearing, (1) contact Debtors' counsel, Glen E. Gates; (2) provide Debtors' counsel with a deposit in the form of a cashier's check drawn on a California bank in the amount equal to or greater than $1,000; and (3) sign a contract which is identical to the Sale Escrow Instructions between Debtors and Proposed Buyer, except for the purchase price that will be determined through bidding at the hearing. Successful overbidders will be responsible for preparing a purchase agreement in conformance with the Sale Escrow Instructions. Unsuccessful bidders' deposits will be returned.

Prospective overbidders must be present at the hearing, make overbids in the amount of $1,000.00 with the first overbid in the amount of $26,000.00, be aware that their deposits will be forfeited if they do not timely close the sale, and acknowledge that this sale is pursuant to terms stated in the Sale Escrow Instructions.

11. 20-11364-B-13 **IN RE: PATRICIA AGUIRRE**
TCS-2

MOTION TO MODIFY PLAN
10-5-2021 [28]

PATRICIA AGUIRRE/MV
TIMOTHY SPRINGER/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.

Patricia S. Aguirre ("Debtor") seeks an ordering confirming her First Modified Chapter 13 Plan. Doc. #28. Debtor wishes to extend the duration of her plan from 60 to 84 months under 11 U.S.C. § 1329(d) and the COVID-19 Bankruptcy Relief Extension Act of 2021. 117 P.L. 5, 135 Stat. 249.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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.

Under 11 U.S.C. § 1329(d), a plan can be extended to not more than 7 years after the time that the first payment under the original plan was due if the debtor is experiencing or has experienced a material financial hardship due to the COVID-19 pandemic. Section 1329(d)(1) requires the plan to have been confirmed prior to the enactment of the COVID-19 Bankruptcy Relief Extension Act of 2021 (March 27, 2021).

Here, Debtor faced material financial hardship directly or indirectly caused by the COVID-19 pandemic. Doc. #31. As result of COVID-19, Debtors' children, their spouses, and Debtor's grandchildren moved in with Debtor. Her original chapter 13 plan was predicated on Debtor supporting a family of one, but she has been supporting a family of

six. As an example, Debtor states that her approximately $500 per month electricity bill has routinely exceeded $1,000 per month. Meanwhile, Debtor's mortgage has increased $200 per month due to increased property values. Debtor states that her children are beginning to obtain jobs and they will soon move out and support themselves. Debtor is proposing a "step plan" in which her plan payments will increase over the duration of her plan as her family members begin moving out. *Id.*

Debtor's previous plan (Doc. #2) was confirmed on August 11, 2020, which is before the COVID-19 Bankruptcy Relief Extension Act was enacted on March 27, 2021. Doc. #22. Debtor satisfies the requirements to extend the plan beyond 60 months under § 1329(d).

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

12. 18-13887-B-13 **IN RE: GREG/MARY JENNINGS**
SAH-5

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEMB LAW GROUP FOR SUSAN HEMB, DEBTORS ATTORNEY(S)
10-6-2021 [87]

SUSAN HEMB/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.

Susan A. Hemb of Hemb Law Group ("Applicant"), attorney for Greg W. Jennings and Mary L. Jennings ("Debtors"), requests compensation under 11 U.S.C. §§ 330 and 331 in the sum of $1,562.78. Doc. #87. The requested amount consists of $1,530.00 in fees as reasonable compensation for services rendered and $32.78 in reimbursement for actual, necessary expenses incurred for the benefit of the estate from August 18, 2021 through September 29, 2021. *Id.* This appears to be Applicant's final fee application.

Debtors filed a declaration indicating that they have no objection to approval of the fee application authorizing the chapter 13 trustee to pay $1,562.68 to Applicant in accordance with the chapter 13 plan. Doc. #90. Debtors' declaration appears to contain a clerical error in that it references costs of $32.68 rather than the $32.78 as stated in the motion. As result, Debtors' consent to payment that is $0.10 less than requested here. *Id.*, at ¶ 2.

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 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 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.

Debtors filed chapter 13 bankruptcy on September 25, 2018. Doc. #1. Section 3.05 of the original chapter 13 plan and the *Rights and Responsibilities* Form EDC 3-096 provided that Applicant was paid $1,500.00 prior to filing the case and, subject to court approval, additional fees of $2,500.00 shall be paid through the plan by complying with LBR 2016-1(c). Docs. ##2-3.

The First Modified Chapter 13 Plan (Doc. #55) is the operative plan in this case. Doc. #65. It reflects the same payment scheme in which Applicant will be compensated the $4,000 "no look" fee under LBR 2016-1(c).

Chapter 13 attorneys have two options for payment of their attorney fees: (1) the "no look" fee of LBR 2016-1(c) or (2) by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. The flat, "no look" fee is generally intended to compensate counsel fully and fairly for the legal services rendered in the case. LBR 2016-1(c)(3). Counsel may apply for additional fees if the flat fee is not sufficient and only in instances where substantial and unanticipated post-confirmation work is necessary. Additional compensation must be requested pursuant to §§ 329, 330, Fed. R. Bankr. P. 2002(a)(6), and subject to court approval.

Here, the former box was checked, and Applicant was paid $1,500 pre-petition and $2,500 post-petition through the chapter 13 plan. Docs. #55; #87, ¶ 7(g). Debtors have a pending motion to modify the chapter 13 plan, which will cause Applicant to "opt-out" of the current flat fee arrangement. SAH-6; Doc. #55. The proposed plan states that Applicant was paid $1,500.00 prior to filing the case, additional fees of $2,500 shall be paid through the plan with court

approval, and Debtors' attorney will seek the court's approval by filing a motion under §§ 329, 330, Fed. R. Bankr. P. 2002, 2016, and 2017 for additional fees in the total amount of $1,562.68. *Id.*, § 3.05.

Applicant has cause to increase her fees beyond the "no look" fee because substantial and unanticipated post-confirmation work was necessary. Debtors sought to sell their real property, which required Applicant to prepare, file, and serve documents related to the sale, appear at the hearing to approve the sale, and prepare, file, and serve the order confirming the sale. Applicant satisfies the requirements to opt-out of the "no look" fee because she was required to perform substantial and unanticipated post-confirmation services.

This is Applicant's first fee application. The Application is silent as to whether this is an interim application under § 331, or if it a request for final compensation under § 330. Applicant's office provided 7.0 billable hours of services at the following rates, totaling **$1,530.00:**

Professional	Rate	Hours	Total
Susan A. Hemb	$300	3.20	$960.00
Christa Bispo (Paralegal)	$150	3.80	$570.00
Total Hours & Fees		**7.00**	**$1,530.00**

Doc. #87, ¶ 10(a). Applicant also incurred **$32.78** in expenses:

Copies	$13.60
Postage	+ $19.18
Total Costs	**= $32.78**

Doc. #91, Ex. A, at 3. These combined fees and expenses total **$1,562.78.**

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services . . . rendered by [a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) preparing, filing, and prosecuting a motion to sell real property (SAH-4), which will bring approximately $41,000 in proceeds into the estate; and (2) preparing and filing this fee application. The court finds the services and expenses reasonable, actual, and necessary.

No party in interest timely filed written opposition. As noted above, Debtors consented to payment of the requested fees and expenses, other than a $0.10 clerical error regarding the expenses.

Accordingly, this motion will be GRANTED. Applicant shall be awarded additional compensation of $1,562.78 on a final basis pursuant to 11 U.S.C. § 330 and LBR 2016-1(c)(3). Upon confirmation of Debtors' proposed chapter 13 plan, Trustee will be authorized, in his discretion, to pay Applicant $1,530.00 in fees as reasonable compensation for services rendered and $32.78 in reimbursement for actual, necessary expenses incurred for the benefit of the estate from August 18, 2021 through September 29, 2021. *Id.*

11:00 AM

1. 20-10809-B-11 **IN RE: STEPHEN SLOAN**
21-1039

STATUS CONFERENCE RE: COMPLAINT
9-3-2021 [1]

SANDTON CREDIT SOLUTIONS
MASTER FUND IV, LP V. SLOAN ET
KURT VOTE/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. 20-10809-B-11 **IN RE: STEPHEN SLOAN**
21-1039 FW-1

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
10-4-2021 [9]

SANDTON CREDIT SOLUTIONS
MASTER FUND IV, LP V. SLOAN ET
PETER SAUER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: The matter will proceed as scheduled.

DISPOSITION: Denied. Movant to file an answer within 14 days of entry of the order.

ORDER: The court will issue the order.

Co-Defendant Stephen Sloan ("Sloan" or "Defendant") moves to dismiss the complaint filed by Plaintiff Sandton Credit Solutions Master Fund IV ("Sandton") under Fed. R. Civ. P. 12(b)(4), (5) and (6) (Fed. R. Bankr. P. 7012) challenging both sufficiency of process and the claims for relief.[4] Sandton opposes.

BACKGROUND

Sandton, whose standing was established as part of an earlier order granting Sandton stay relief, filed this adversary proceeding to set aside certain allegedly fraudulent transfers of real estate done by Sloan personally or as Trustee of his revocable trust. The transfers allegedly happened shortly before this bankruptcy case was filed. The transferees, William Brett Sloan as Trustee of two irrevocable trusts for Sloan's children – Brett Trust and Grace Trust – are also defendants and have answered the complaint.[5] The property allegedly

transferred consists of approximately 17 separate properties in four counties.

The complaint alleges the transfers are voidable since they were made with actual intent to defraud and constructively fraudulent under § 548 (a) and Cal. Civ. Code §§ 3439.04 and 3439.05. Sandton prays for: avoidance and recovery of the allegedly fraudulent transfers under § 550, interest, and costs, and attorney's fees under contracts between Sloan and some of his entities and Sandton and allowance of Sandton's administrative claim for pursuing this litigation for the benefit of the estate.

Sloan moves to dismiss the complaint contending first, Sandton can be awarded no relief against Sloan since he was the alleged transferor of the properties, not a transferee. Second, the dispute concerning the fraudulent transfers is not ripe for adjudication because a pending reorganization plan providing for seriatim property liquidations may, if successful, result in full payment of creditors. Therefore, there may be no need to avoid the transfers. Third, Sloan held some properties for the benefit of Sloan's parents and did not have beneficial title. So, no loss of estate value occurred because of those transfers. Fourth, Sloan was not individually served so the complaint should be dismissed until proper service is made.

Sandton contends first that relief can be granted against Sloan because transferors can be proper defendants, Sloan benefitted from the transfers, and the complaint seeks other relief against Sloan besides transfer avoidance – costs, and attorney's fees. Second, the dispute is ripe for judicial relief since there is yet no confirmed plan and there are conditions in the plan for timing of sales and other contingencies which do not support a claim the suit is not yet ripe. Third, Sloan owned all properties transferred. Finally, fourth, Sandton tacitly admits Sloan was not directly served with the complaint. But they have now served Sloan with a new summons (Doc. #22) and Sloan is not prejudiced since his counsel filed this motion.

DISCUSSION

1

We first dispose of the service issue. Civ. Rule 12(b)(4) and (5) permits a party to move to dismiss for insufficient process or service of process. These provisions are often interchangeable. But the court has broad discretion to extend the service of process period. *Efaw v. Williams*, 473 F.3d 1038, 1040 (9th Cir. 2007). The factors to be considered are statute of limitations bar, prejudice to defendant, actual notice of the lawsuit, and eventual service. *Id.*

The applicable factors here all support denial of the motion. Sandton has served Sloan. Sloan has suffered no prejudice because no default or other relief has been entered against him. Sloan's counsel had

notice of the lawsuit and filed this motion. Rather than dismissal, the court will exercise its discretion and permit the service that Sandton has completed. See, *Oyama v. Sheehan (In re Sheehan)*, 253 F.3d 507, 511 (9th Cir. 2001)).

2.

Civ. Rule 12(b)(6) is applicable to adversary proceedings under Rule 7012(b) and allows the court to dismiss a complaint for "failure to state a claim upon which relief can be granted." Courts may dismiss a complaint if it "fails to state a cognizable legal theory or fails to allege sufficient factual support for its legal theories." *Caltex Plastics, Inc. v. Lockheed Martin Corp.*, 824 F.3d 1156, 1159 (9th Cir. 2016), citing *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010); *Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011). "A complaint need not state 'detailed factual allegations,' but must contain sufficient factual matter to 'state a claim that is plausible on its face.'" *Doan v. Singh*, 617 F.App'x 684, 685 (9th Cir. 2015), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544-55 (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." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), citing *Twombly*, 550 U.S. at 556.

When considering dismissal, all material facts alleged in the complaint are to be taken as true and viewed in the light most favorable to the plaintiff. *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012). "[T]he tenet that a court must accept as true all allegations in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 662, citing *Twombly*, 550 U.S. at 555. The court may also draw on its "judicial experience and common sense." *Id.* at 679.

A.

Sloan is a proper defendant though he is the transferor. To be sure, Sloan is not in title so he cannot be compelled to transfer the properties back to the estate under § 550. But he is important to the establishment of the basis for avoidance and other relief is being sought against him.

Sandton has provided an example where costs were awarded against the transferor in a fraudulent transfer action. *McGranahan v. Kinerson (In re Kinerson)*, 16-22163-A-7, A.P. 16-02134, 2017 Bankr. LEXIS 4135 *18, *19 (Bankr. E.D. Cal Dec. 4, 2017) (costs awarded against transferor). Cal. Civ. Code § 3439.07(a)(3) permits awarding any relief the circumstances may require subject to applicable rules of equity and civil procedure. Cal. Civ. Code § 3439.08(b)(1)(A) permits recovery against the first transferee of the asset or the person for whose benefit the transfer was made. At this time, it is subject to proof who benefitted from the transfer. That decision cannot be made on a

pleading motion. It is also too early to determine what equitable relief the estate may be entitled against Sloan, if any.

Interest awards under federal law are discretionary with the court guided by considerations of fairness and what will make the aggrieved party whole. *Acequia, Inc. v. Clinton (In re Acequia)*, 34 F.3d 800, 818 (9th Cir. 1994). For obvious reasons, we do not know if any interest will be awarded here. But relief can be awarded against Sloan even if he is a transferor.

Sloan's authority supports this conclusion. *Huon Le v. Krepps (In re Krepps)*, 476 B.R. 646, 651-52 (Bankr. S.D. Ga. 2012) (granting summary judgment against debtor-transferor that transfer was fraudulent but denying recovery of property or land value from the transferor). Notably, in *Krepps* there was no contention made that the debtor-transferor was an entity "for whose benefit the transfer was made." That may be different here depending upon proof.

That said, the complaint does not allege the necessary facts that Sloan directly benefitted from the alleged *initial* transfer. That is required for intended beneficiary liability. *In re Bullion Reserve of North America*, 922 F. 2d 544, 548 (9th Cir. 1991). But that is not fatal to the complaint because Sloan is an appropriate defendant in any case.

B.

The dispute is ripe for judicial intervention. Even if not yet ripe, any impediment can be dealt with through scheduling mechanisms, not dismissal.

Ripeness requires an evaluation of the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration. *Whitman v. American Trucking Associations*, 531 U.S. 457, 479 (2001). The factual development of the issues here has yet to occur. But the transfers have already occurred. Neither the plaintiff nor the defendant would necessarily suffer hardship from delay. The parties can use notice strategies to minimize the risk of the initial transferees here conveying the properties.

The Plan is not yet confirmed. If confirmed, there is a schedule for liquidations and the confirmed Plan would control that. Plan completion does not make relief in this action speculative. *Educational Credit Mgmnt. Corp. v. Coleman (In re Coleman)*, 560 F. 3d 100, 1005 (9th Cir. 2009) (holding plan completion in Chapter 13 case is a "single factual contingency" not a "series of contingencies" rendering a decision "impermissibly speculative.")

Should delay adjudicating this dispute become necessary, that can be handled by the court's ability to control scheduling the development and trial of this case. Civ. Rule 16(b)(3), (4); (c)(2)(P). Dismissal on this ground is unwarranted.

C.

Finally, the issue of Sloan's ownership of certain properties before conveyance is not an issue to be determined now. There is a dispute between Sandton and Sloan concerning the extent of Sloan's "ownership" of certain properties Sloan received from his parents. But this issue is, by definition, factually intensive. Questions of context, intent, and many other factors surround that dispute. A motion to dismiss will not decide the issue.

The motion to dismiss will be DENIED. Sloan shall file an answer within 14 days of entry of the order.

---

[4] Future references to the Fed. R. Civ. P. will be "Civ. Rule;" Fed. R. Bankr. P. will be "Rule;" and unless otherwise specified, references to code sections will be to the United States Bankruptcy Code.
[5]Sandton also alleges that at least one transfer was to the "Sloan Family Irrevocable Trust established February 4, 2020." This was shortly before the bankruptcy case was filed.

3. 21-11539-B-7 **IN RE: GURNAM SINGH AND GURJIT SIDHU**
21-1040

STATUS CONFERENCE RE: AMENDED COMPLAINT
9-24-2021 [8]

SIDHU V. MIDLAND FUNDING, LLC
ET AL
PETER BUNTING/ATTY. FOR PL.
DISMISSED 10/18/21

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Fed. R. Bankr. P. 41(a)(1)(A)(i) (applicable under Fed. R. Bankr. P. 7041) allows the plaintiff to dismiss an action without a court order by filing a notice of dismissal before the opposing party serves an answer or a motion for summary judgment.

Plaintiff Gurjit Kaur Sidhu filed a notice of dismissal on October 18, 2021. Doc. #11. Defendants Midland Funding, LLC and Michael Douglas Kahn have not filed an answer, motion for summary judgment, or any other responsive pleadings. This complaint does not concern an objection to discharge pursuant to 11 U.S.C. § 727. Therefore, Plaintiff's notice of dismissal is an effective dismissal under Fed. R. Bankr. P. 41.

Accordingly, this status conference will be DROPPED FROM CALENDAR because the adversary proceeding has been dismissed.

4. 21-10368-B-7 **IN RE: SIMONA PASILLAS**
21-1038

STATUS CONFERENCE RE: COMPLAINT
9-1-2021 [1]

SALVEN V. PASILLAS ET AL
GABRIEL WADDELL/ATTY. FOR PL.

NO RULING.

5. 20-12269-B-7 **IN RE: ANTHONY VILLA**
20-1054

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
11-12-2020 [23]

VOKSHORI LAW GROUP V. VILLA
NIMA VOKSHORI/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

The court is in receipt of the declaration of Timothy C. Springer, attorney for the defendant. Doc. #48. This pre-trial conference will proceed as scheduled. The parties shall be prepared to discuss and set upcoming trial dates and deadlines.

6. 08-13589-B-7 **IN RE: SHAWN DEITZ**
08-1217 MB-1

MOTION TO VACATE RENEWAL OF JUDGMENT
10-6-2021 [212]

FORD ET AL V. DEITZ
HAGOP BEDOYAN/ATTY. FOR MV.
CLOSED 04/05/2013, RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 18, 2021 at 11:00 a.m. in Department A before the Honorable Jennifer E. Niemann.

NO ORDER REQUIRED.

The Honorable René Lastreto II recused himself from hearing this case on November 5, 2021. Doc. #224. The matter is assigned to the Honorable Jennifer E. Niemann and will be heard on November 18, 2021 at 11:00 a.m. in Department A, Courtroom 11, Fifth Floor, 2500 Tulare Street, Fresno, California.