

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, November 17, 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. [21-10300](#)-B-13     **IN RE: DONALD/STEPHANIE SALKIN**  
[MHM-4](#)

MOTION TO DISMISS CASE  
10-19-2021    [\[66\]](#)

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

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Denied.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause under 11 U.S.C. § 1307(c) and (c)(1) for unreasonable delay by the debtors that is prejudicial to creditors and failure to confirm a chapter 13 plan. Doc. #66.

Donald Lee Salkin and Stephanie Austin Salkin ("Debtors") did not oppose.

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

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 debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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).

It appears that there has been unreasonable delay by Debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). Debtors' deadline to lodge a confirmation order on under LBR 3015-1(e) was June 22, 2021. Doc. #68. Debtors filed bankruptcy on February 5, 2021 but have failed to confirm a chapter 13 plan after more than nine months. Trustee declares that the order confirming plan cannot be submitted until an order valuing a 2018 Ford Explorer held by Valley First Credit Union is entered. Doc. #68.

However, the Debtors have a pending motion to value collateral scheduled in matter #2 below. TCS-2. The court intends to grant that motion to value collateral, so the Debtors will be able to confirm their chapter 13 plan.

Accordingly, the court is inclined to DENY this motion WITHOUT PREJUDICE.

2. [21-10300](#)-B-13     **IN RE: DONALD/STEPHANIE SALKIN**  
[TCS-2](#)

MOTION TO VALUE COLLATERAL OF VALLEY FIRST CREDIT UNION,  
TRIBUTE CAPITAL PARTNERS  
10-18-2021    [\[61\]](#)

STEPHANIE SALKIN/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.

Donald Lee Salkin and Stephanie Austin Salkin ("Debtors") seek an order valuing a 2018 Ford Explorer with 57,000 miles ("Vehicle") at \$25,100.00. Doc. #61. Vehicle is encumbered by a purchase money security interest in favor of Valley First Credit Union as serviced by Tribute Capital Partners ("Creditor") in the amount of \$37,695.46.<sup>1</sup> Claim #6-2; *cf.* Doc. #1, *Sched. A/B*.

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 if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) that collateral is personal property other than a motor vehicle acquired for the personal use of the debtor, and (3) the debt was incurred within one year preceding the filing of the petition.

Joint debtor Donald Salkin declares that Debtors purchased Vehicle in April 2018. Doc. #63. Debtors filed bankruptcy on February 5, 2021, so 910 days before the petition date is August 10, 2018. Thus, the debt here was incurred more than 910 days preceding the filing of the petition, so the elements of § 1325(a)(\*) are not met and § 506 is applicable.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

11 U.S.C. § 506(a)(2) states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

Mr. Salkin declares that the replacement value of Vehicle is \$25,100.00. Doc. #63. This opinion is based on his familiarity with Vehicle as its owner, as well as the age and condition of the Vehicle. Mr. Salkin declares that Vehicle: (1) is approximately four years old; (2) has approximately 57,000 miles on it; (3) has four years of interior wear and tear; (4) has a "small ding" in the door; and (5) needs new tires and a tune up. Based on the current condition, Mr. Salkin does not believe that anyone trying to sell it would get any more than \$25,100.00 for it.

The joint debtor is competent to testify as to the replacement value of the Vehicle as its owner. Fed. R. Evid. 701. Given the absence of contrary evidence, Debtors' opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No party in interest timely filed written opposition.

Accordingly, this motion will be GRANTED. Creditor's secured claim will be fixed at \$25,100.00. 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.

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<sup>1</sup> Debtors have complied with Federal Rule of Bankruptcy Procedure 7004(b)(3) by serving Kathryn J. Davis, Creditor's Chief Executive Officer, by certified mail at its primary mailing address on October 18, 2021. The court notes that Debtor complied with Rule 7004(h), which was not required because Creditor does not appear to be insured by the Federal Deposit Insurance Corporation, so it is not an insured depository institution within the context of 11 U.S.C. § 101(35)(A) and 12 U.S.C. § 1813(c)(2).

3. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[FW-3](#)

CONTINUED MOTION FOR SUMMARY JUDGMENT  
9-14-2021     [[115](#)]

GABRIEL WADDELL/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to November 17, 2021 at 11:00 a.m.

NO ORDER REQUIRED.

This motion will be continued to the 11:00 a.m. calendar to be heard with the parties' related adversary proceeding.

4. [21-12520](#)-B-13     **IN RE: DAVID/DELIA HAYES**  
[SLL-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
11-2-2021     [[10](#)]

DELIA HAYES/MV  
STEPHEN LABIAK/ATTY. FOR DBT.

NO RULING.

David Lee Hayes and Delia Marie Hayes ("Debtors") seek an order to extend the automatic stay under 11 U.S.C. § 362(c) (3). Doc. #10.

Though not required, chapter 13 trustee Michael H. Meyer ("Trustee") filed comments in response to this motion. Doc. #16.

Written opposition was not required and may be presented at the hearing. This matter will be called as scheduled to inquire whether any parties in interest oppose stay relief.

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. If opposition is presented at the hearing, the court will set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

Under 11 U.S.C. § 362(c) (3) (A), if the debtor has had a bankruptcy case pending within the preceding one-year period but was dismissed, then the automatic stay with respect to the debtor under subsection (a) shall terminate on the 30th day after the filing of the latter case. Debtors had one case pending within the preceding one-year period that was dismissed: Case No. 18-11770-B-13. That case was filed on May 1, 2018 and dismissed on September 17, 2021 for failure to timely make plan payments. This case was filed on October 29, 2021 and the automatic stay will expire on November 28, 2021. Doc. #1.

In addition to this dismissal, Debtors have three other previous dismissed cases in the last 10 years. In his comments, Trustee included the following chart:

Case No.	Type	Filed	Dismissed	Days
11-16885	13	06/16/11	07/24/15	1,499
16-13893	13	10/27/16	05/13/17	198
17-12451	13	06/27/17	01/25/18	212
18-11770	13	05/01/18	09/17/21	1,235
<b>Total days in chapter 13</b>				<b>3,144</b>
Total days between 1 <sup>st</sup> filing & last dismissal				<b>3,746</b>
Total years between 1 <sup>st</sup> filing & last dismissal <sup>2</sup>				<b>10.26</b>
Percentage of time in chapter 13				<b>83.9%</b>
Percentage of time expressed in years				<b>8.61</b>

Doc. #16.

11 U.S.C. § 362(c) (3) (B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest

demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.' Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition.'" *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by *Taggart v. Lorenzen*, 139 S. Ct. 1785 (2019)).

Here, the presumption of bad faith arises. This case is presumed to have been in bad faith as to all creditors because Debtors have more than one previous case under chapter 13 that was pending within the preceding one-year period and that case was dismissed for failure to perform the terms of a confirmed plan. 11 U.S.C. § 362(c)(3)(C)(i) (I) and (II)(cc).

Joint debtor Delia M. Hayes declares that the previous case was dismissed because Debtors fell behind on their plan payments. Doc. #12. Ms. Hayes states that Debtors had necessary auto expenses for their 2001 Qx4 and their Chrysler in the amounts of \$5,500 and \$2,000, respectively. *Id.*, ¶ 4(1). Debtors contend that these expenses were necessary because they would not have had viable transportation. Additionally, two sides of Debtors' adjoining fences "were knocked down and had to be replaced and other needed home repairs totaling approximately \$6,000.00." *Id.*, ¶ 4(2). Ms. Hayes asserts confidence that Debtors have the ability to maintain plan payments for an extended period of time, successfully confirm their chapter 13 plan, and make the required payments to Trustee in a timely manner. *Id.*, ¶ 5.

Debtors' proposed chapter 13 plan entails 60 monthly plan payments of \$2,625 per month and provides for a 0% distribution to unsecured creditors. Doc. #3.

Trustee's comments contend that the motion is devoid of any facts regarding the Debtors' financial condition. Doc. #16. Though the declaration states that Debtors had auto expenses of \$7,500 and expenses relating to fencing in the amount of \$6,000, Trustee notes that the declaration in support of their previous plan modification failed to account for car or fence repairs. *Id.* Trustee opposed the plan because the on-going mortgage payments were delinquent, and the plan did not propose how to cure \$10,000 in post-petition mortgage payments. Since Debtors did not file and serve a new modified plan, the case was dismissed.

Trustee notes that Debtors earned \$130,960 in 2019 and \$135,000 in 2020. Per Debtors' current Form 122C-1, Trustee states that Debtors are on track to earn \$115,364.04 based on their \$9,613.67 per month income between April 2021 and September 2021. *Id.* Meanwhile, Debtors' debts have progressed as follows:

Case No.	Unsecured Student Loans	Unsecured Non-Student Debt	Total Unsecured Debt	Mortgage Arrears
11-16885	\$10,587.00	\$76,033.02	\$86,620.02	\$0.00
16-13893	\$24,337.39	\$94,539.30	\$118,876.69	\$7,843.93
17-12451	\$23,461.64	\$101,159.25	\$124,620.89	\$13,752.82
18-11770	\$67,488.00	\$116,324.57	\$183,812.57	\$22,823.40
21-12520	\$72,999.50	\$130,630.00	\$203,629.50	\$17,000.00

*Id.* In sum, based on the information provided by Trustee, 10.26 years have lapsed since Debtors filed their first chapter 13 bankruptcy on June 16, 2011. Of that amount of time, Debtors have been in a chapter 13 proceeding for 83.9% of that time, or 8.61 years. During that time, Debtors' total unsecured debt has increased from \$86,620.02 to \$203,629.50. Meanwhile, the student loan debt - non-dischargeable absent a showing of undue hardship under § 523(a)(8) - has increased from \$10,587.00 to \$72,999.50. See *United Student Aid Funds v. Pena (In re Pena)*, 155 F.3d 1108 (9th Cir. 1998); *Brunner v. New York State Higher Educ. Servs. Corp.*, 831 F.2d 395 (2d Cir. 1987);

The amount of time Debtors have been engaged in a chapter 13 proceeding is concerning. Trustee is correct: Debtors have not explained how their financial condition or circumstances have changed. Debtors have not provided clear and convincing evidence rebutting the presumption that this case was filed in bad faith. How will this case be any different than the previous cases, especially in light of increasing debts?

This matter will be called as scheduled to inquire about Debtors' response to Trustee's comments. The court will also inquire whether any parties in interest oppose extension of the automatic stay.

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<sup>2</sup> This entry was modified from months to years.



5. [17-11523](#)-B-13     **IN RE: TRINIDAD LOPEZ**  
[DRJ-5](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS  
ATTORNEY(S)  
10-18-2021    [\[57\]](#)

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.

David R. Jenkins of David R. Jenkins, P.C. ("Applicant"), attorney for Trinidad Lopez ("Debtor"), requests final compensation in the sum of \$4,000.00 pursuant to 11 U.S.C. § 330. Doc. #57. This amount consists solely of fees for reasonable compensation, with waived expenses, for services rendered from April 16, 2017 through October 15, 2021.

Debtor signed a statement of consent on October 16, 2021 indicating that Debtor had received and read the fee application and approves the same. Doc. #59, Ex. 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). The failure of the creditors, the debtor, 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.

The Third Modified Chapter 13 Plan is the operative plan in this case. Docs. #46; #54. Section 3.05 indicates that Applicant was paid \$0.00 prior to filing the case and, subject to court approval, additional fees of \$4,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr.

P. 2002, 2016, and 2017. Doc. #46. The non-standard provisions in Section 7 note for Paragraph 2.06 that Applicant was paid \$2,000 post-petition by Debtor's legal insurance plan. *Id.* Applicant declares that this amount was paid by US Legal Insurance, which is disclosed in paragraph 16 of the *Statement of Financial Affairs and Disclosure of Attorney Compensation*. Doc. #59, Ex. A; *cf.* Doc. #1, Forms 107, 2030. Applicant further declares that he has not accepted or demanded from Debtor or any other person any payment for services or costs without first seeking a court order permitting payment of those fees and costs. Doc. #59, Ex. A.

This is Applicant's first and final request for compensation. Doc. #57. The source of funds for payment of the fees will be from the chapter 13 trustee in accordance with the confirmed chapter 13 plan.

Applicant provided 21.20 billable hours of legal services at a rate of \$350.00 per hour, totaling \$7,420.00 in fees, but Applicant waived all fees exceeding **\$4,000.00**. *Id.* Doc. #59, Ex. B. Applicant also incurred \$66.40 in costs, but waived all expenses.

Applicant's services included, without limitation: (1) advising Debtors about bankruptcy and non-bankruptcy alternatives; (2) gathering information and documents to prepare the petition, schedules, and plan, and reviewing Debtor's financial information, the effects of exemptions and value of assets; (3) preparing the petition, schedules, statements, and chapter 13 plan; (4) preparing and sending § 341 meeting documents to the trustee; (5) attending and completing the § 341 meeting of creditors; (6) confirming the Original, First Modified, and Third Modified Chapter 13 Plans (DRJ-2; DRJ-4); and (7) preparing and filing this motion for compensation. Doc. #59, Exs. A, B, C. The court finds the services reasonable, actual, and necessary.

No party in interest timely filed written opposition. As noted above, Debtor has consented to the application. *Id.*, Ex. D. Accordingly, this motion will be GRANTED. Applicant will be awarded \$4,000.00 in fees on a final basis pursuant to § 330. The chapter 13 trustee is authorized, in his discretion, to pay Applicant \$4,000.00 in accordance with the chapter 13 plan for services rendered from April 16, 2017 through October 15, 2021.

6. [17-10028](#)-B-13     **IN RE: MANSOUR/PHEBE TOPALIAN**  
[BDB-3](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE  
REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY,  
AS TO DEBTOR  
10-18-2021    [\[64\]](#)

MANSOUR TOPALIAN/MV  
BENNY BARCO/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Denied without prejudice to filing a motion  
                                 augmenting the record.

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

On September 28, 2020, joint debtor Phebe Topalian ("Decedent") died.  
She is survived by her husband, joint debtor Mansour Topalian  
("Debtor").

Debtor seeks omnibus relief to (1) be substituted as the  
representative for or successor to Decedent for this joint chapter 13  
case; (2) allow for the continued administration of the chapter 13  
case after Decedent death; and (3) waive the 11 U.S.C. § 1328  
certification requirements for entry of discharge with respect to  
Decedent. Doc. #64.

No party in interest timely filed written opposition. However, the  
court is inclined to DENY this motion WITHOUT PREJUDICE because there  
is no record supporting that further administration is possible and  
that it would be in the best interests of all parties. This matter  
will be called and proceed as scheduled.

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. 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).

The court notes that the notice of hearing (Doc. #65) filed with this  
motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the  
notice to include the names and addresses of persons who must be

served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

Upon the death of a debtor in a bankruptcy case that has not been closed, LBR 1016-1(a) provides that a notice of death shall be filed within sixty (60) days of the death of a debtor by counsel or the person intending to be appointed as the representative for or successor to a deceased debtor pursuant to Fed. R. Civ. P. 25(a) (Fed. R. Bankr. P. 7025). The notice of death shall be served on all other parties in interest, and a redacted copy of the death certificate shall be filed as an exhibit to the notice of death.

LBR 1016-1(b) permits the notice of death and requests for the following relief to be combined into a single motion for omnibus relief under Fed. R. Civ. P. 18(a) (Fed. R. Bankr. P. 7018, 9014(c):

- 1) Substitution as the representative for or successor to the deceased debtor in the bankruptcy case pursuant to Fed. R. Civ. P. 25(a);
- 2) Continued administration of the case under chapter 13 pursuant to Fed. R. Bankr. P. 1016; and
- 3) Waiver of the post-petition education requirement for entry of discharge under 1328, including the post-petition education requirement under subsection (g).

Pursuant to LBR 1016-1, Debtor filed this motion for omnibus relief with a notice of death and redacted death certificate for Decedent. Docs. #64; #67, Ex. A.

The court notes that both Debtor and Decedent filed certificates of debtor education pursuant to 11 U.S.C. § 1328(g). Docs. ##54-55.

If a reorganization or individual's debt adjustment case is pending under chapter 13, Fed. R. Bankr. P. 1016 permits the case to proceed and be concluded in the same manner, so far as possible, as though the death had not occurred if two pre-requisites are met: (1) further administration is possible and (2) administration is in the best interest of all parties. However, Fed. R. Bankr. P. 1016 also allows the case to be dismissed.

Courts have held that chapter 13 cases do not need to be dismissed and may continue if (1) the debtor proposed a confirmable plan before the debtor's death; and (2) the plan is feasible after the debtor's death. *In re Perkins*, 381 B.R. 520, 537 (Bankr. S.D. Ill. 2007) (permitting further administration because it is both possible and in the best interests of parties); *In re Stewart*, 2004 Bankr. LEXIS 1042 (Bankr. D. Or. Mar. 2, 2004) (continued administration permitted if a personal representative is appointed and the confirmed plan is made current and paid through completion); *cf. In re Spider*, 232 B.R. 669, 674 (Bankr.

N.D. Tex. 1999) (further administration deemed not possible because debtors' chapter 13 plan was not confirmed before death).

Here, the debtors filed chapter 13 bankruptcy on January 6, 2017. Doc. #1. Their chapter 13 plan provided for 60 monthly payments of \$2,129.12 was confirmed on April 12, 2017. Docs. #8; #53. The 60th month after the petition date is January 2022. The court notes that the order confirming plan requires the debtors to immediately notify the chapter 13 trustee in writing of any termination, reduction, or other change in employment. Doc. #53.

The schedules indicate that Decedent contributed slightly more than half of the debtors' income, earning approximately \$2,488.29 per month. Doc. #1, *Sched. I*. Combined with Debtor's monthly income of \$1,379.98, including \$300 as contribution from his son, their combined income was \$3,568.27 on the petition date. *Id.* No amended schedules have been filed in this case. After payment of \$1,447.00 in expenses, their combined net monthly income was \$2,121.27, which is just slightly below their original chapter 13 plan payment.

In the absence of amended schedules or other evidence of a change in income, it appears that Debtor is incurring a monthly deficit of \$67.02, which would make the confirmed chapter 13 plan unfeasible.

The court notes that Debtor has continued to make the plan payment since Decedent passed away on September 28, 2020. However, based on the current record before the court, Debtor has not established that continued administration is both possible and is in the best interests of the parties.

There is no evidence supporting this motion other than: (1) the death certificate of Decedent; (2) Debtor wants to be substituted as representative or successor; and (3) waiver of the § 1328 certification requirements.

This matter will be called as scheduled to inquire about the absence of supporting evidence that continued administration is both possible and in the best interests of the parties.

7. [20-12848](#)-B-13     **IN RE: PATRICK/MARIBETH TABAJUNDA**  
[ALG-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-12-2021    [\[99\]](#)

VALLEY STRONG CREDIT UNION/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
ARNOLD GRAFF/ATTY. FOR MV.

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

DISPOSITION:     Denied as moot.

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

Valley Strong Credit Union f/k/a Kern Schools Federal Credit Union ("Movant") seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2) with respect to real property located at 1925 Montgomery Lane, Delano, CA 93215 ("Property"). Doc. #99. Movant seeks to commence all acts necessary under applicable non-bankruptcy law to enforce its rights and remedies against the Property.

This motion will be DENIED AS MOOT because Movant already has stay relief under the confirmed chapter 13 plan as a Class 3 creditor. Doc. #63, § 3.11(a)(1).

This motion was originally filed and set for hearing on November 18, 2021. Doc. #100. The next day, after a calendar correction memo (Doc. #106), Debtor amended the notice of hearing to correct the hearing date to November 17, 2021. Doc. #108. Through the amended notice, 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 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. § 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.

Movant contends that cause exists because its interest in Property is not adequately protected due to Debtors' failure to make plan payments.

Debtors executed a promissory note in the amount of \$417,000.00 and deed of trust encumbering Property in favor of Movant on or about November 21, 2007. Doc. #104, Exs. 1-2. On February 13, 2012, Debtors executed a loan modification, in which Debtors agreed to pay the unpaid principal balance of \$420,938.61 over 317 months at 4.625% interest. *Id.*, Exs. 3-4.

Debtors filed bankruptcy on August 31, 2020. Doc. #1. After sustaining Movant's objection to confirmation of their original plan (ALG-1), Debtors filed their First Modified Plan on March 24, 2021. Doc. #63. The plan was confirmed on May 7, 2021. Doc. #84. Under the terms of the plan, Movant was listed as a Class 3 secured creditor, which was to be satisfied by the surrender of collateral.

Under Section 3.11(a) of the confirmed plan, the automatic stay of the debtor and co-debtor under 11 U.S.C. §§ 362(a) and 1301(a) is terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral. Doc. #63, § 3.11(a)(1). Since Movant is a Class 3 creditor, the automatic stay is terminated with respect to Movant. Movant may therefore exercise its rights and remedies under applicable non-bankruptcy law to dispose of its secured claim and use the proceeds to satisfy its claim.

Accordingly, the motion will be DENIED AS MOOT. Movant may submit an order denying the motion and confirming that the automatic stay has already terminated on the grounds set forth above. No other relief is awarded.

8. [21-12151](#)-B-13     **IN RE: BRIAN FOLLAND**  
[MHM-2](#)

MOTION TO DISMISS CASE  
10-19-2021    [\[20\]](#)

MICHAEL MEYER/MV  
BRIAN FOLLAND/ATTY. FOR DBT.  
DISMISSED 10/28/2021

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

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by Brian Nicholas Folland ("Debtor") that is prejudicial to creditors, failure to appear at the § 341(a) meeting of creditors, and failure to provide required documents. Doc #20.

This case was already dismissed on October 28, 2021. Docs. #24; #25. Accordingly, this motion to dismiss will be DENIED AS MOOT.

9. [18-14060](#)-B-13     **IN RE: SCOTTIE/CHRISTINA NABORS**  
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)  
10-18-2021    [\[79\]](#)

GABRIEL WADDELL/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.

Gabriel J. Waddell of Fear Waddell, P.C. ("Applicant"), attorney for Scottie Ray Nabors and Christina Maria Nabors ("Debtors"), requests interim compensation under 11 U.S.C. §§ 330 and 331 in the sum of \$7,440.85. Doc. #79. The requested amount consists of \$6,964.00 in fees as reasonable compensation for services rendered and \$476.85 in reimbursement for actual, necessary expenses incurred for the benefit of the estate from July 1, 2019 through September 30, 2021.



Debtors signed a statement of consent on October 15, 2021 indicating that they have read the fee application and approve the same. Doc. #81, Ex. E.

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

The Second Modified Chapter 13 Plan is the operative plan in this case. Docs. #67; #71. Section 3.05 indicates that Applicant was paid \$3,690.00 prior to filing the case and, subject to court approval, additional fees of \$15,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #67. Additionally, Applicant indicates in that his firm was also paid the \$310.00 filing fee with the retainer.

This is Applicant's second fee application. The court previously awarded \$2,534.00 in fees and \$344.22 in costs, totaling \$2,878.22, for services rendered and expenses incurred from August 1, 2018 through June 30, 2019. Doc. #44. Applicant now requests \$7,440.85 pursuant to § 331. Doc. #79.

Applicant's office provided 24.10 billable hours of legal services, totaling **\$6,964.00** as follows:

<b>Professional</b>	<b>Rate</b>	<b>Hours</b>	<b>Total</b>
Gabriel J. Waddell (2019)	\$310	2.40	\$744.00
Gabriel J. Waddell (2020)	\$320	16.30	\$5,216.00
Gabriel J. Waddell (2021)	\$330	2.00	\$660.00
Katie Waddell (2019)	\$210	0.20	\$42.00
Kayla Schlaak (2019)	\$80	1.60	\$128.00
Kayla Schlaak (2020)	\$100	0.20	\$20.00
Kayla Schlaak (2021)	\$110	1.40	\$154.00
<b>Total Hours &amp; Fees</b>		<b>24.10</b>	<b>\$6,964.00</b>

*Id.*, § 6. Applicant also advanced **\$476.85** in costs:

Photocopying	\$308.85
Postage	+ \$168.00
<b>Total Costs</b>	<b>= \$476.85</b>

*Id.*, § 7; Doc. #81, Ex. B. These combined fees and expenses total **\$7,440.85**.

The source of funds for payment of the fees will be from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. Doc. #79. Applicant declares that there are \$12,121.78 remaining in the plan for attorney fees, so payment of this fee application will not affect plan feasibility. *Id.*, § 8(3)(a).

11 U.S.C. § 330(a)(1)(A) & (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: (1) finalizing the initial fee application (FW-1); (2) communicating with the Debtors regarding the original plan, creditor correspondence, and notices of default; (3) confirming the First and Second Modified Chapter 13 Plans (FW-2; FW-3); and (4) preparing and filing this fee application. Doc. #81, Ex. A.

No party in interest timely filed written opposition. As noted above, Debtors consented to the application. Accordingly, this motion will be GRANTED. Applicant will be awarded \$6,964.00 in fees and \$476.85 for costs on an interim basis under § 331, subject to final review pursuant to § 330. The chapter 13 trustee will be authorized, in his discretion, to pay Applicant \$7,440.85 for services rendered and expenses incurred for the benefit of the estate from July 1, 2019 through September 30, 2021.

10. [21-10681](#)-B-13     **IN RE: TERRY JACOBS**  
[PBB-4](#)

NOTICE OF DEFAULT AND MOTION TO DISMISS CASE FOR FAILURE TO  
MAKE PLAN PAYMENTS AS TRANSMITTED TO BNC FOR SERVICE .  
10-5-2021     [\[75\]](#)

PETER BUNTING/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:             This matter will proceed as scheduled.

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

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

Chapter 13 trustee Michael H. Meyer ("Trustee") filed a notice of  
default on October 5, 2021, asserting that Debtor was delinquent for  
the September 25, 2021 plan payment in the amount of \$2,485.00.  
Doc. #75.

On October 20, 2021, Terry LaVon Jacobs ("Debtor") objected to the  
notice of default. Doc. #79. Debtor declared that a cashier's check in  
the amount of \$2,500 had been mailed to Trustee on September 24, 2021,  
but the tracking information indicated that the "package is in transit  
and arriving late." Doc. #81. A copy of the cashier's check receipt  
and a copy of the tracking information was filed concurrently as an  
exhibit. Doc. #82, Exs. A, B.

Trustee replied on October 28, 2021, noting that (1) Local Rule of  
Practice ("LBR") 3015-1(f)(1) requires plan payments to be *received* by  
Trustee on the 25th day of each month, and (2) Trustee received the  
cashier's check on October 27, 2021. Doc. #84. As result, Trustee  
would remove Debtor from the delinquency list.

But then, on November 2, 2021, Trustee filed a supplemental reply  
indicating that he received a notification that the payment had to be  
returned due to a stop payment being placed on the check Doc. #86. As  
result, Trustee will not remove Debtor from the delinquency list. In  
speaking with Debtor's attorney, Trustee understands that the Debtor  
thought the check had been lost in the mail, so Debtor sent a  
replacement check in addition to the regular payment for October 2021.  
*Id.*

Trustee also states that Debtor's counsel has requested a 30-day  
continuance to allow Trustee time to receive Debtor's replacement  
payments, and Trustee does not oppose a brief continuance to allow  
Debtor to become current. *Id.*

Continuances without a court order are not permitted. LBR 9014-1(j). However, LBR 9014-1(j) permits oral requests for continuances if made at the scheduled hearing, or in advance by written application. The court may continue this objection to December 15, 2021 at 9:30 a.m. if any party in interest requests a continuance.

Trustee's supplemental reply says that he would not oppose a continuance, but it does not specifically request a continuance. If no written application for a continuance is received by the court before this hearing, and if Debtor's counsel does not appear at the hearing to orally request a continuance, then the objection will be overruled without prejudice for failure to comply with the Local Rules of Practice.

11. [21-10061](#)-B-13     **IN RE: JACINTO/KAREN FRONTERAS**  
[GEG-6](#)

CONTINUED MOTION TO SELL  
10-5-2021    [\[148\]](#)

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

TENTATIVE 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.

The court previously pre-disposed this matter to be tentatively granted, with the hearing proceeding as scheduled for higher and better bids. Doc. #159. However, Debtors and their attorney did not appear at the hearing scheduled on November 10, 2021. *Id.* The court intended to deny the motion without prejudice for lack of prosecution, but the chapter 13 trustee's attorney, Kelsey A. Seib, requested a brief continuance. *Id.*

No party in interest timely filed written opposition. If Debtors or Debtors' counsel appear at the hearing, the court intends to GRANT this motion subject to higher and better bids at the hearing.

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
<b>Net to the estate</b>	<b>= \$6,704.41</b>

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 provided that Debtors or their attorney appear at the hearing. If so, the hearing will proceed for higher and better bids only and Debtors will be authorized to sell Property to the highest bidder as determined at the hearing and return any and all deposits of unsuccessful bidders. Further, Debtors will be authorized to pay the expenses of sale itemized in the Estimated Closing Statement and execute all documents necessary or convenience to complete the transaction.

If Debtors and their attorney, Glen E. Gates, both do not appear at the hearing, the motion will be DENIED WITHOUT PREJUDICE for failure to prosecute.

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.

11:00 AM

1. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[TAT-2](#)

PRE-TRIAL CONFERENCE RE: MOTION FOR RELIEF FROM AUTOMATIC  
STAY  
11-12-2020    [\[76\]](#)

SANDRA WARD/MV  
GABRIEL WADDELL/ATTY. FOR DBT.  
THOMAS TRAPANI/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

This matter will be called as scheduled, but the pre-trial conference will not go forward. In the parties' related adversary proceeding, Adv. Proc. No. 20-1035, the pleadings and parties do not appear to be settled.

Roger L. Ward and Sandra S. Ward filed a motion to dismiss Armando Natera's supplemental complaint, which is scheduled for hearing December 1, 2021 at 11:00 a.m. See Adv. Proc. No. 20-1035, TAT-4.

Additionally, Richard Barnes and Parker Foreclosure have filed a motion for leave to file a third-party complaint, which is scheduled for January 7, 2022 at 11:00 a.m. *Id.*, WEW-1.

The court cannot issue a scheduling order until the pleadings are settled, and all parties are present. This matter will be called and proceed to discuss future scheduling.

2. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[20-1035](#)     [FW-6](#)

CONTINUED MOTION FOR SUMMARY ADJUDICATION  
9-14-2021    [\[138\]](#)

NATERA V. BARNES ET AL  
GABRIEL WADDELL/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

This motion will be called as scheduled.



Roger L. Ward and Sandra S. Ward filed a motion to dismiss Armando Natera's supplemental complaint, which is scheduled for December 1, 2021 at 11:00 a.m. TAT-4.

Additionally, Richard Barnes and Parker Foreclosure have filed a motion for leave to file a third-party complaint, which is scheduled for January 7, 2022 at 11:00 a.m. WEW-1.

The court cannot issue a scheduling order until the pleadings are settled, and all parties are present. So, until the court determines whether the motion to dismiss and for leave to file a third-party complaint are granted or denied, consideration of this motion is premature. This matter will be called and proceed to discuss future scheduling.

3. [17-14112](#)-B-13    **IN RE: ARMANDO NATERA**  
[20-1035](#)    [TAT-3](#)

FURTHER SCHEDULING CONFERENCE CONTINUED RE: MOTION FOR  
SUMMARY JUDGMENT  
9-1-2021    [[124](#)]

NATERA V. BARNES ET AL  
THOMAS TRAPANI/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

Defendants Roger L. Ward and Sandra S. Ward filed a motion to dismiss Plaintiff Armando Natera's supplemental complaint, which is scheduled for December 1, 2021 at 11:00 a.m. TAT-4.

Additionally, Defendants Richard Barnes and Parker Foreclosure have filed a motion for leave to file a third-party complaint, which is scheduled for January 7, 2022 at 11:00 a.m. WEW-1.

The court cannot issue a scheduling order until the pleadings are settled, and all parties are present. So, until the court determines whether the motion to dismiss and for leave to file a third-party complaint are granted or denied, consideration of this motion is premature. This matter will be called and proceed to discuss future scheduling.

4. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[20-1035](#)

PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT  
12-23-2020    [\[92\]](#)

NATERA V. BARNES ET AL  
GABRIEL WADDELL/ATTY. FOR PL.  
CONT'D TO 12/17/21 PER AMENDED SCHEDULING ORDER #121

NO RULING.

This matter will be called as scheduled, but the pre-trial conference will not go forward because the pleadings and parties do not appear to be settled.

Defendants Roger L. Ward and Sandra S. Ward filed a motion to dismiss Plaintiff Armando Natera's supplemental complaint, which is scheduled for December 1, 2021 at 11:00 a.m. TAT-4.

Additionally, Defendants Richard Barnes and Parker Foreclosure have filed a motion for leave to file a third-party complaint, which is scheduled for January 7, 2022 at 11:00 a.m. WEW-1.

The court cannot issue a scheduling order until the pleadings are settled, and all parties are present. So, until the court determines whether the motion to dismiss and for leave to file a third-party complaint are granted or denied, a pre-trial conference is premature. This matter will be called and proceed to discuss future scheduling.

5. [20-11657](#)-B-7     **IN RE: MARICEL/CHRISTOPHER LOCKE**  
[20-1049](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT  
10-28-2020    [\[25\]](#)

GUILLERMO V. LOCKE ET AL  
GILBERT ZAVALA/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

This conference was previously continued so that Defendants Maricel and Christopher Locke may file an amended pre-trial conference statement if they so choose. Docs. ##38-39. Defendants did not file an amended pre-trial conference statement, but they were not required to do so. Accordingly, this pre-trial conference will proceed as scheduled.

6. [19-13374](#)-B-7     **IN RE: KENNETH HUDSON**  
[21-1032](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
8-5-2021    [\[1\]](#)

VETTER V. PETROLEUM CAPITAL  
INCOME PROPERTIES, LLC, A  
LISA HOLDER/ATTY. FOR PL.

NO RULING.

7. [19-13374](#)-B-7     **IN RE: KENNETH HUDSON**  
[21-1032](#)     [LNH-5](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT  
10-14-2021    [\[37\]](#)

VETTER V. PETROLEUM CAPITAL  
INCOME PROPERTIES, LLC, A  
LISA HOLDER/ATTY. FOR MV.

NO RULING.

Chapter 7 trustee Jeffrey M. Vetter ("Plaintiff") seeks entry of a default judgment against debtor Kenneth Ray Hudson, individually ("Hudson"), and his limited liability companies, Petroleum Capital Income Properties, LLC, a Wyoming Limited Liability Company ("Wyoming LLC") and Petroleum Capital Income Properties, LLC, a California Limited Liability Company ("California LLC" or collectively, "Defendants"). Doc. #37.

There is no opposition from Defendant.

The court may GRANT IN PART and DENY IN PART or DENY WITHOUT PREJUDICE, the motion. This matter will be called as scheduled.

Plaintiff's motion was filed on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. Defendants were properly served the summons and complaint on August 12, 2021 and this motion on October 14, 2021 in accordance with Fed. R. Bankr. P. ("Rules") 7004(b)(1) and (9). Docs. #9; #42.

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 administration of estate), (E) (orders to turn over property of the

estate), and (H) (proceedings to determine, avoid, or recover fraudulent conveyances). Venue is proper under 28 U.S.C. § 1409.

The court entered Defendants' defaults on September 14, 2021. Docs. #15; #19; #21. Plaintiff was directed to apply for a default judgment and set this "prove up" hearing within 30 days of entry of default. *Id.* Plaintiff properly applied for default judgment on October 14, 2021 and has complied with the order.

#### BACKGROUND

Hudson is the 100% of California LLC and Wyoming LLC. Wyoming LLC was formed by Hudson sometime in 2017 and California LLC was formed on May 11, 2021.

Prior to filing chapter 7 bankruptcy, Hudson owned 2.2 million shares of Citadel Exploration, Inc. ("Citadel") stock. Doc. #1.

Plaintiff alleges that Hudson owned 2.2 million Citadel shares on the petition date, according to a transcript taken during a debtor examination on March 29, 2019, 130 days before the petition date. At the examination, Hudson was asked what assets he currently owns other than mineral rights, to which he testified, "I own 2.2 million shares of Citadel Exploration, and I own various overriding royalties that were part of the settlement agreement that you're probably already aware of." Doc. #41, Ex. B, at 11.

When Hudson filed bankruptcy on August 6, 2019, the 2.2 million Citadel shares were not listed in *Schedule A/B*. See Case No. 19-13374 ("Bankr.") Doc. #1, *Sched. A/B*. In his *Statement of Financial Affairs*, Hudson did not disclose any sale, trade, or transfer of the 2.2 million shares. *Id.*, Form 107, at ¶ 18. Hudson's amended schedules filed September 5, 2019, October 3, 2019, and November 14, 2019 also did not include an interest in the 2.2 million Citadel shares or describe any transfer. Docs. #13; #18; #24. Therefore, Plaintiff concludes that Hudson owned the 2.2 million shares on the petition date, which are property of the estate and must be turned over to Plaintiff under 11 U.S.C. § 542.

Additionally, Hudson had an interest in oil, gas, and other hydrocarbon substances produced under a parcel of land in Kern County, California ("Mineral Rights"), which is described in a Mineral, Oil, and Gas grant deed recorded on June 7, 2019. Doc. #41, Ex. A. These Mineral Rights were listed in Hudson's *Schedule A/B* filed on the petition date with a value of \$100,000.00. Bankr. Doc. #1, *Sched. A/B*, ¶ 1.1. No exemption was claimed with respect to the Mineral Rights. *Id.*, *Sched. C*. In *Schedule D*, Hudson scheduled a debt owed to third-party Royalty Lending, Inc. ("Royalty Lending") in the amount of \$129,000.00 and secured by the Mineral Rights. *Id.*, *Sched. D*. Per *Schedule I*, Hudson received \$613.86 per month as disbursement from the Mineral Rights. *Id.*, *Sched. I*.

In a different adversary proceeding initiated by Royalty Lending, Adv. Proc. No. 20-01027, Hudson filed a motion to compel Plaintiff to abandon asset to Hudson. In support of that motion, Hudson declared:

On the date the bankruptcy case was filed, I owned the following sole proprietorship asset, with the following value, lien amounts, and exemptions claimed:

<u>Asset</u>	<u>Value</u>	<u>Lien</u>	<u>Exemption</u>	<u>Net Value</u>
Mineral	\$8,400.00	\$92,827.72	\$0.00	\$0.00

See Adv. Proc. No. 20-01027, Doc. #16, Ex. B. That adversary proceeding was ultimately dismissed when Royalty Lending filed a notice of dismissal without prejudice before the defendants had filed an answer.

On June 7, 2019, Hudson recorded the Mineral Rights grant deed purporting to convey all Mineral Rights from "Kenneth R. Hudson, an individual" to "Petroleum Capital Income Properties." Doc. #1, Ex. A. That same date, Hudson signed as president of Petroleum Capital Income Properties, LLC, as grantor, and delivered a special warranty deed conveying the Mineral Rights to Royalty Lending II LTD, as grantee. *Id.*, Ex. B. In exchange for the special warranty deed, promissory notes, and other documents, Royalty Lending distributed \$89,712.52 to Hudson's Comerica Bank Account, which was held in the name of "Petroleum Capital Properties, LLC."

The funds were used to pay Hudson's personal expenses, including pre-paying four months of rent, making truck insurance payments, paying for groceries, gas, travel, restaurants, and withdrawing \$17,000 in cash in June 2019, \$42,000 in cash in July 2019, and \$1,600 in cash in August 2019 before filing his bankruptcy petition. Some of this cash - \$28,000 - was listed in *Schedule A/B*.

Plaintiff has received a \$40,000 offer for the Mineral Rights interests and therefore asserts that its fair market value is at least \$40,000.00.

As result, Plaintiff filed this adversary complaint and alleges six causes of action, seeking the following relief:

- (1) Compelling Hudson to turnover of 2.2 million shares of Citadel Exploration, Inc. to Plaintiff pursuant to 11 U.S.C. § 542(a);
- (2) Compelling Hudson to turnover mineral, oil, and gas interests by a deed of trust from "Petroleum Capital Income Properties" to Plaintiff pursuant to § 542(a);
- (3) Avoiding the fraudulent transfer of the mineral, oil, and gas interests of all Defendants pursuant to 11 U.S.C. § 548(a) (1) (A);

- (4) Avoiding the avoidable transfers of mineral, oil, and gas interests of all Defendants pursuant to § 548(a)(1)(B).
- (5) Imposing liability on the transferee of an avoided transfer of the mineral, oil, and gas interests of all Defendants pursuant to 11 U.S.C. § 550.
- (6) Preserving avoided transfers for the benefit of the bankruptcy estate under 11 U.S.C. § 551.

## DISCUSSION

### I. Default Judgment Standard

Fed. R. Civ. P. ("Civ. Rule") 55 (incorporated under Rule 7055) governs default judgments. To obtain a default judgment, a two-step process is required: (1) entry of the party's default (normally by the clerk), and (2) entry of default judgment. *Brooks v. United States*, 29 F.Supp 2d 613, 618 (N.D. Cal. 1998), *aff'd mem.*, 162 F.3d 1167 (9th Cir. 1998). "[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 of Citadel Shares

Under 11 U.S.C. § 541(a), Hudson's chapter 7 petition filed August 6, 2019 created a bankruptcy estate. The estate "is comprised of all of the following property, wherever located and by whomever held: . . . all legal or equitable interests of the debtor in property as of the commencement of the case." § 541(a)(1).

Plaintiff, as trustee of Hudson's bankruptcy case, has a duty to "collect and reduce to money the property of the estate . . . and close such estate as expeditiously as is compatible with the best interests of parties in interest." § 704. In furtherance of those duties, a bankruptcy trustee has the power to use, sell, or lease

property of the estate under § 363. The trustee is empowered by § 542(a) to compel the debtor to "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." § 542(a); *In re Gerwer*, 898 F.2d 730, 733 (9th Cir. 1990).

### III. Remaining Claims

Plaintiff's remaining causes of action involve the Defendants' Mineral Rights. Plaintiff alleges a fraudulent or avoidable transfer to "Petroleum Capital Income Properties," though it is unclear whether this refers to Wyoming LLC, California LLC, or another third-party registered in a different state. Neither Wyoming LLC nor California LLC are specifically named as a grantee, but Plaintiff contends that it must have been one of the two.

However, the complaint states that the transferee pledged the Mineral Rights by Special Warranty Deed to Royalty Lending. Royalty Lending, meanwhile, has extended over \$90,000 in funds purportedly secured by these Mineral Rights. So, Royalty Lending appears to be an immediate transferee from whomever the initial transferee was, either Wyoming LLC or California LLC. Per the complaint, Royalty Lending is either a recipient of a fraudulent transfer or the subsequent encumbrancer of a purportedly void transfer.

Civ. Rule 19 requires Royalty Lending to be joined as a party to this adversary proceeding because the court cannot accord complete relief among existing parties. Royalty Lending has an interest relating to the Mineral Rights, so disposing of the action in its absence may impair or impede its ability to protect its interests. Therefore, Royalty Lending is a necessary and indispensable party, and must be joined. *United States v. Bowen*, 172 F.3d 682, 688 (9th Cir. 1999).

Joinder is feasible because venue is proper, and the court has both personal and subject matter jurisdiction. *E.E.O.C. v. Peabody W. Coal Co.*, 400 F.3d 774, 789 (9th Cir. 2005). Further, Royalty Lending already filed a related adversary proceeding against Defendants and Plaintiff, though it was voluntarily dismissed without prejudice before any of the defendants filed an answer. Adv. Proc. No. 20-01027.

### CONCLUSION

This matter will be called as scheduled. The court could grant this motion with respect to compelling Hudson to turn over the 2.2 million Citadel shares. But under Civ. Rule 54(b) (Rule 7054), the court must find there is no just cause for delay to enter a judgment on less than all claims and against less than all parties. Movant has not provided any evidence why entry of judgment should not be delayed so all parties are before the court.

The motion will be DENIED WITHOUT PREJUDICE as to the remaining causes of action because third-party transferee Royalty Lending, LLC, who is

an immediate transferee of the initial transfer, was not named in the complaint and appears to be an indispensable third-party.

8. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[FW-3](#)

CONTINUED MOTION FOR SUMMARY JUDGMENT  
9-14-2021    [[115](#)]

GABRIEL WADDELL/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

This matter was continued to 11:00 a.m. from the 9:30 a.m. chapter 13 calendar.

Armando Natera ("Debtor") moves for partial summary judgment for an order: (1) granting this motion for summary judgment; (2) finding the bankruptcy petition was filed at 1:59:28 p.m. on October 25, 2017; (3) finding the automatic stay went into immediate effect; (4) finding the foreclosure sale conducted by Parker Foreclosure Services, LLC ("Parker") was in violation of the stay; (5) finding Parkers' recording of the trustee's deed upon sale in favor of Richard Barnes was a knowing and willful violation of the stay; (6) finding that Barnes' conveyance to Scott and Mitzi Lincicum was a knowing and willful violation of the automatic stay; (7) finding because the original foreclosure sale was void, all acts and conveyances subsequent to the foreclosure sale are void; and (8) denying the motion to retroactively annul the automatic stay (TAT-2). Doc. #115.

Roger S. and Sandra L. Ward (the "Wards") timely opposed and submitted their responses to the statement of undisputed facts. Docs. #121-22.

Debtor filed a reply to the Wards' opposition and a status report. Docs. #142; #144.

In the status report, Peter A. Sauer, Debtor's counsel, documents his difficulties communicating with the opposing parties' counsel. Doc. #142. Though counsel for Barnes and Parker suggested a 30-day extension on discovery in light of their cross complaint against a third party, no clarification was provided regarding whether this was intended to apply to all discovery, or only discovery for the anticipated third-party cross claim.

Mr. Sauer's status report proposes the following schedule for resolving this motion and the related adversary proceeding:

Fact Discovery: Fact discovery is closed, except for the deposition of Maria Mills, whose deposition commenced on October 13, but was



suspended so that she could secure counsel. Her deposition shall be concluded not later than November 19, 2021.

Expert Discovery: The Wards identified an expert witness on October 11, 2021 and produced an expert report in accordance with Fed. R. Civ. P. 26(a)(2)(B) on November 1, 2021. Debtor shall designate a rebuttal expert no later than December 1, 2021.

Hearing Dispositive Motions: Debtor's dispositive motions shall be heard on December 15, 2021.

Debtor's pre-trial statement: January 12, 2022.

Remaining parties' pre-trial statement(s): January 26, 2022.

Pre-trial conference: February 9, 2022.

However, the pleadings and parties do not appear to be settled. The Wards filed a motion to dismiss Armando Natera's supplemental complaint, scheduled for hearing December 1, 2021 at 11:00 a.m. See Adv. Proc. No. 21-10 TAT-4.

Additionally, as noted by Mr. Sauer, Barnes and Parker filed a motion for leave to file a third-party complaint, which is scheduled for hearing January 7, 2022 at 11:00 a.m. *Id.*, WEW-1.

Until the court determines the motion to dismiss the supplemental complaint and the motion for leave to file a third-party complaint, ruling on this motion is premature. This matter will be called and proceed to discuss future scheduling.