

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: December 4, 2019  
Place: Department B – 510 19th Street  
Bakersfield, California

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. 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.**

**9:00 AM**

1. [15-11302](#)-B-13     **IN RE: DENISE WILEY**  
[RSW-6](#)

MOTION TO MODIFY PLAN  
10-15-2019    [\[118\]](#)

DENISE WILEY/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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 Moving Party will submit a proposed order after hearing.

This motion is DENIED. Debtor proposes, as part of her modified plan, that no payments be made for the next six months, and then a final payment of "approximately \$2,168.00" will be made in month 60 of the plan.

The chapter 13 trustee ("Trustee") timely opposes confirmation because Trustee believes that the plan is not filed in good faith (due to not making a payment for six months), that "approximately \$2,168.00" is not specific enough, and debtor's amended Schedule J shows a monthly net income of negative \$0.84.

Debtor responded, stating that debtor "and her daughter can pay a [sic] lease \$250.00 monthly beginning December 2019, which would leave a balance of only \$1.158.59 to be paid in April, which is the 60th month." Doc. #128.

Debtor's declaration in support of the motion, she states that she expects to earn approximately \$800.00 to \$826.00 monthly IF she qualifies for SSI and if she does, she "will save as much money as possible to be able to afford the final payment in April. My daughter has told me she will be able to help me financially by then also if needed." Doc. #120.

This matter will be called to allow Trustee to respond to debtor's proposal. The court is still not persuaded by the declaration and amended schedules I and J that the modification is feasible, since

Debtor is not sure if she will qualify for SSI. Also, the daughter is under no legal or binding obligation to maintain payments if there is a short fall. The plan does not appear feasible. Debtor's physical challenges will likely continue since she expects SSI payments. This plan may not fund based on the state of the evidence.

2. [19-13902](#)-B-13     **IN RE: HEZEKIAH SHERWOOD**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
11-12-2019    [\[47\]](#)

JEFFREY MEISNER/ATTY. FOR DBT.

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

DISPOSITION:        Continued to January 8, 2020 at 9:00 a.m.

ORDER:                The court will issue an order.

The chapter 13 trustee ("Trustee") has filed an objection to the debtor's plan for confirmation. 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 24, 2019. 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 January 2, 2020.

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 January 2, 2020. 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.

3. [19-12504](#)-B-13     **IN RE: PEGGY JAMES**  
[RSW-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF MR. COOPER  
8-19-2019    [\[37\]](#)

PEGGY JAMES/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:        Dropped from calendar.

NO ORDER REQUIRED:    Resolved by stipulation of the parties. Doc.  
#62.

4. [18-12305](#)-B-13     **IN RE: CORINA NIETO**  
[PK-3](#)

MOTION TO SELL  
11-14-2019    [\[34\]](#)

CORINA NIETO/MV  
PATRICK KAVANAGH/ATTY. FOR DBT.  
OST 11/15/19

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3) and an order shortening time (doc. #40) 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.

This motion is GRANTED. 11 U.S.C. § 363(b)(1) allows the chapter 13 debtor ("Debtor") 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 free and clear of liens under § 363(b).

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at \*2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at \*4, 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 Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo.

2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Debtor asks this court for authorization to sell real property located at 9000 Saint Jean Court in Bakersfield, CA 93312 ("Property") to Hein T. Nguyen ("Buyer"), subject to higher and better bids at the hearing, for \$244,080.00. Doc. #34. The sale will fully pay off Debtor's plan, which will pay 100% of the unsecured creditors' claims. Buyer has paid a \$25,000.00 deposit. No transfer of possession or title will take place until escrow closes. The Property is being sold "as-is." Id.

It appears that the sale of the Property is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. The court approves the sale and the 6% real estate commission.

5. [19-13411](#)-B-13      **IN RE: ADAM CHAVEZ**  
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
9-26-2019    [\[13\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:          Movant withdrew the objection. Doc. #24.

6. [19-12515](#)-B-13      **IN RE: ALICE CAMERON**  
[RSW-2](#)

MOTION TO VACATE DISMISSAL OF CASE  
11-20-2019    [\[35\]](#)

ALICE CAMERON/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
DEBTOR DISMISSED: 11/18/2019

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

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.

This motion is GRANTED. Federal Rule of Civil Procedure 60(b) (made applicable by Federal Rule of Bankruptcy Procedure 9024) states that, "on motion and just terms, the court may relieve a party of its legal representative from a final judgment, order, or proceedings for the following reasons: mistake, inadvertence, surprise, or excusable neglect. . . any other reason that justifies relief."

In this case, Debtor's case was dismissed on the chapter 13 trustee's ("Trustee") motion for failure to make plan payments. Debtor was apparently giving the plan payments to a relative to make, but for some unknown reason the payments were not being made. Doc. #37. Mr. Williams' declaration is entirely hearsay as to why the debtor entrusted plan payments to a relative. There are simple methods available to assure direct payments to the Trustee. Why were they ignored here?

Counsel informed debtor to bring a cashier's check for \$12,840.00 to his office, and he would mail the check overnight to Trustee. Debtor brought a check for \$14,500.00 to counsel's office on September 7, 2019, however the check was not sent to Trustee until mid-November. Counsel's book keeper was out of the office on November 7 through November 12, and Counsel did not know the funds were received until his book keeper returned to work. Id. Trustee received and posted the check on November 19, 2019, however Debtor's case was dismissed the day prior.

The court finds excusable neglect sufficient to grant the requested relief and grant the motion, but the court is not convinced the debtor is being cautious enough to assure continued compliance with her duties. Debtor performed their part in taking counsel's advice and providing more than the correct amount to make them current. Debtor appears to have had the ability and was making good-faith payments, but debtor's family member failed to make them on her behalf. The case was dismissed due to counsel's excusable neglect. If debtor is current by the date of this hearing, then the court intends to GRANT this motion.

7. [19-13316](#)-B-13     **IN RE: CURTIS ROSS**  
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
9-26-2019    [\[16\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION:        Continued to December 19, 2019 at 1:30 p.m.

ORDER:                The court will issue an order.

This objection was continued because debtor did not appear at the first § 341 meeting of creditors, and the chapter 13 trustee ("Trustee") did not have an opportunity to examine the debtor. The § 341 meeting was continued to November 8, 2019. Debtor failed to appear at that hearing as well.

Trustee filed a motion to dismiss set for hearing on December 19, 2019 at 1:30 p.m. Therefore this objection is continued to that date and time to be heard in conjunction with the motion to dismiss. If the case is dismissed, this objection will be overruled as moot. If the case is not dismissed, this objection may be continued.

8. [19-14736](#)-B-13     **IN RE: REBECCA HEADE**  
[PK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY  
11-20-2019    [\[15\]](#)

GSF GREENHAVEN INVESTORS, LP/MV  
PATRICK KAVANAGH/ATTY. FOR MV.

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:        Granted.

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

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

This motion is GRANTED. Creditor GSF Greenhaven Investors, LP ("Creditor") asks the court for an order confirming that the

automatic stay under 11 U.S.C. § 362(a) is not in effect, or in the alternative, relief from the stay.

Creditor entered into a rental contract with debtor in July 2019. In October 2019, Creditor commenced an unlawful detainer action in Kern County Superior Court. On October 28, 2019, The Kern County Superior Court issued an interlocutory judgment in favor of Creditor, declaring the lease forfeited and restored possession to Creditor. Creditor presented the Kern County Sheriff with the judgment and a writ of possession. The property was set for lockout on November 13, 2019, but Debtor filed a skeletal petition on November 12, 2019.

11 U.S.C. § 362(b) (22) states

The filing of a petition . . . does not operate as a stay subject to subsection (1), under subsection (a) (3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be sued a controlled substance on the property.

However, the court cannot find that the stay is not in effect pursuant to this section because no evidence has been presented that Creditor sought "possession of the residential property . . . based on endangerment of such property or the illegal use of controlled substances . . . ." Neither declaration states as such, and in fact, the complaint filed by Creditor in Kern County Superior Court states that the unlawful detainer action "is solely for nonpayment of rent." See doc. #19, exhibit B, section 6f.

However, the court is able to find cause to grant relief from the stay.

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.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the lease was terminated and forfeited pre-petition. See Ducharme v. JR Capital Grp. (In re Ducharme), 358 F. App'x 921, 922 (9th Cir. 2009).



The court also finds that the debtor does not have any equity in the property and the property is not necessary to an effective reorganization. The residence was leased by debtor. Doc. #19.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(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. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because judgment has been entered in the state court unlawful detainer action and a writ of possession has been issued.

The court notes debtor's reply and opposition. Doc. #27. Debtor shall appear at the hearing and further explain to the court why stay relief should not be granted.

9. [19-13541](#)-B-13     **IN RE: LETICIA JASSO DE NUNEZ**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST  
COMPANY  
11-18-2019    [\[26\]](#)

DEUTSCHE BANK NATIONAL TRUST COMPANY/MV  
VINCENT GORSKI/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Overruled.

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

This objection is OVERRULED.

The court notes that this objection does not comply with the time constraints explained in Local Rule of Practice 3015-1(c)(4). Normally, objections to confirmation must be filed and served within seven days after the first date set for the § 341 meeting of creditors. In this case, that date was October 15, 2019. Doc. #14. Movant Deutsche Bank National Trust Company ("Movant") filed and served this objection on November 18, 2019 - well past the seven day time limit. However, Movant, nor its servicer Specialized Loan Servicing, LLC, ("SLS") were ever served with the "Notice of Commencement of Case under chapter 13," which included the date for the meeting of creditors. Doc. #15.

Debtor's schedules lists PHH Mortgage Services ("PHH") as the holder of deed of trust securing 2030 San Marco Court in Delano, CA. Doc. #10, Schedule D. Debtor's master address list only includes PHH - not movant nor SLS. The court notes that PHH has not yet filed a

claim in this case, but Movant has. Claim #15. This claim lists the same address as PHH's collateral on Schedule D.

However, this grave procedural error, even if rebutted, does not counter the substantive grounds on which the court overrules this objection.

Movant objects to plan confirmation on the grounds that Movant's claim is not included in debtor's proposed plan. Doc. #26. Movant is secured by real property located at 2030 San Marco Court in Delano, CA. Claim #15. The subject property is properly listed in Schedules A/B and D of the bankruptcy petition. Doc. #10. Creditor filed its claim on October 28, 2019.

A secured creditor's claim need not be "provided for" by the Plan. If a claim is provided for by the Plan, § 1325(a)(5) governs its treatment. But, there is nothing in §§ 1322 or 1325 requiring that a secured creditor's claim be "provided for" in the Plan.

Second, section 3.11(b) of the Plan states that a secured creditor whose claim is not provided for may seek stay relief. See doc. #11.

Third, Section 3.01 of the Plan provides that it is the proof of claim, not the plan itself, that determines the amount to be repaid under the plan. Id. If the plan is confirmed, Creditor may move for stay relief. This objection is OVERRULED.

10. [19-13541](#)-B-13      **IN RE: LETICIA JASSO DE NUNEZ**  
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL  
H. MEYER  
10-16-2019    [\[17\]](#)

VINCENT GORSKI/ATTY. FOR DBT.

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

DISPOSITION:      Sustained.

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

This objection is SUSTAINED. By prior order of the court (doc. #20), debtor had either until November 20, 2019 to file and serve a written response to the chapter 13 trustee's objection to confirmation, or until November 27, 2019 to file, serve, and set for hearing a confirmable modified plan or the objection would be sustained on the grounds therein. Debtor has neither responded to the objection nor filed a modified plan. Therefore pursuant to the court's previous order, this objection is SUSTAINED.

11. [19-13343](#)-B-13     **IN RE: CHRISTINA CORONEL**  
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL  
H. MEYER  
9-26-2019    [\[18\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Sustained.

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

This objection is SUSTAINED.

The chapter 13 trustee ("Trustee") objected to confirmation under 11  
U.S.C. §§ 1322(a), 1325(a)(3), (4), and (7). Doc. #18.

Debtor responded, stating that all the issues are resolved. Doc.  
#29. Trustee responded, stating that the issues have not been  
resolved. Doc. #31. Debtor again responded. Doc. #35.

12. [19-12366](#)-B-13     **IN RE: CLINT/JUDITH HARRISON**  
[RSW-1](#)

MOTION TO CONFIRM PLAN  
10-28-2019    [\[39\]](#)

CLINT HARRISON/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Denied.

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

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 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). Therefore, the defaults of the  
above-mentioned parties in interest are entered, except for the  
chapter 13 trustee. Upon default, factual allegations will be taken  
as true (except those relating to amount of damages). Televideo

Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is DENIED. The chapter 13 trustee ("Trustee") opposed because debtor was delinquent at least \$9,618.00 through October 2019 and that debtors were proposing to pay less to unsecured creditors than the code required under 11 U.S.C. § 1325(b). Doc. #50.

Debtor responded, stating that debtors are current and an amended means test has been filed, showing that debtors may pay 0% to unsecured creditors. Doc. #58.

This matter will be called to allow Trustee to respond to debtors' claims. If Trustee has no objection, then the plan will be confirmed. Otherwise, the motion is denied.

13. [19-12366](#)-B-13     **IN RE: CLINT/JUDITH HARRISON**  
[RSW-2](#)

MOTION TO VALUE COLLATERAL OF CALIFORNIA FRANCHISE TAX BOARD  
11-20-2019    [\[52\]](#)

CLINT HARRISON/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                 Granted.

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

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.

This motion is GRANTED. Based on the evidence offered in support of the motion, the respondent's junior priority mortgage claim is found to be wholly unsecured and may be treated as a general unsecured claim in the chapter 13 plan. The debtor may proceed to obtain relief from this lien upon completion of the necessary requirements under applicable law. If the chapter 13 plan has not been confirmed, then the order shall specifically state that it is not effective until confirmation of the plan.

*This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.*

14. [19-12368](#)-B-13     **IN RE: JONATHAN LEACH**  
[RSW-3](#)

MOTION TO CONFIRM PLAN  
10-23-2019    [\[33\]](#)

JONATHAN LEACH/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
DISMISSED 11/12/19

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            An order dismissing the case has already been entered. Doc. #48.

15. [19-13474](#)-B-13     **IN RE: STEPHANIE LOCASCIO**  
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL  
H. MEYER  
9-26-2019    [\[12\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the objection. Doc. #23.

16. [15-10678](#)-B-13     **IN RE: THOMAS MUNOZ**  
[RSW-3](#)

MOTION TO MODIFY PLAN  
10-10-2019    [\[127\]](#)

THOMAS MUNOZ/MV  
ROBERT WILLIAMS/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.

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

This motion is 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.

17. [19-13682](#)-B-13     **IN RE: SALVADOR TEJEDA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
11-1-2019    [\[25\]](#)

DISMISSED 11/7/19

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

DISPOSITION:        Dropped as moot.

NO ORDER REQUIRED.

The case was dismissed on November 7, 2019. Doc. #30.

10:00 AM

1. [19-11818](#)-B-7     **IN RE: JONATHAN DOVICH**  
[DMG-2](#)

MOTION TO SELL  
11-6-2019    [\[28\]](#)

JEFFREY VETTER/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.  
D. GARDNER/ATTY. FOR MV.  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #38.

2. [19-13630](#)-B-7     **IN RE: MERCEDES MARTINEZ**  
[DMG-1](#)

MOTION TO AVOID LIEN OF CAVALRY PORTFOLIO SERVICES, LLC  
11-6-2019    [\[11\]](#)

MERCEDES MARTINEZ/MV  
D. GARDNER/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.

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

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Cavalry Portfolio Services, LLC as assignee of Cavalry SPV I, LLC as assignee of Hilco Receivables, LLC as assignee of Bank of America in the sum of \$28,165.00 on May 6, 2019 and renewed on February 19, 2019. Doc. #14. The abstract of judgment was recorded with Kern County on June 11, 2019. Id. That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$162,702.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$7,600 on that same date, consisting of a first deed of trust in favor of Freedom Mortgage. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of \$175,000.00. Id.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

3. 18-12341-B-7     **IN RE: DANNY/ROBIN MARSHALL**  
LNH-2

MOTION TO SELL  
10-18-2019    [70]

RANDELL PARKER/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.  
LISA HOLDER/ATTY. FOR MV.

TENTATIVE RULING:     This matter will proceed for higher and better bids only.

DISPOSITION:            Granted.

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

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). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. 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."

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, No. 16-00327-GS, 2018 WL 6584772, at \*2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at \*4, 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 Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The chapter 7 trustee asks this court for authorization to sell Debtors' interests in DWT Solutions, L.P. ("DWT"), Analytical Systems, LLC ("AS"), and Intellectual property rights related to patent rights owned by DWT ("IP Rights") (collectively Estate Assets"), to Guide Valve USA Limited, ("Proposed Buyer"), for \$50,000.00. DWT's and AS's assets include U.S. Patent 9,334,728, for an oil well production analyzing system. There has been no opposition to this motion.

The motion is unclear on ownership of patent rights. The debtors' schedules suggest at least one of the debtors own the patent rights. But the motion says DWT owns the rights. The court cannot approve a sale of what the estate does not own. The court can approve the sale of the debtors' interests in DWT and Analytical Systems but, according to the schedules, those entities do not own the patent rights.

It appears that the sale of the Estate Assets is in the best interests of the estate, for a fair and reasonable price, supported

by a valid business judgment, and proposed in good faith. Higher and better bids are to be presented at the hearing.

But any order approving the sale will not include a finding of ownership of the patent rights. If there is a dispute as to ownership that must be resolved by the estate and the buyer. The order shall specifically include a statement the court is making no finding the estate owns the patent rights.

4. [19-12543](#)-B-7     **IN RE: CECILIA SALDANA**  
[RSW-3](#)

MOTION TO AVOID LIEN OF TWO JINN INC. DBA ALADDIN BAIL BONDS  
11-7-2019    [\[28\]](#)

CECILIA SALDANA/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #52.

5. [19-12543](#)-B-7     **IN RE: CECILIA SALDANA**  
[RSW-4](#)

MOTION TO AVOID LIEN OF ADILENE GONZALES  
11-7-2019    [\[33\]](#)

CECILIA SALDANA/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #54.

6. [19-12543](#)-B-7      **IN RE: CECILIA SALDANA**  
[RSW-5](#)

MOTION TO AVOID LIEN OF TWO JINN INC.  
11-15-2019    [\[42\]](#)

CECILIA SALDANA/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

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.

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Two Jinn Inc dba Aladdin Bail Bonds in the sum of \$1,668.00 on February 20, 2019. Doc. #45. The abstract of judgment was recorded with Kern County on May 7, 2019. Id. That lien attached to the debtor's interest in a residential real property in Wasco, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$242,749.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$218,250.00 on that same date, consisting of a first deed of trust in favor of USDA Rural Development. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$24,499.00. Id.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

7. [19-12543](#)-B-7      **IN RE: CECILIA SALDANA**  
[RSW-6](#)

MOTION TO AVOID LIEN OF ADILENE GONZALES  
11-15-2019    [\[47\]](#)

CECILIA SALDANA/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

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.

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd* 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Adilene Gonzales in the sum of \$8,459.39 on May 18, 2018. Doc. #50. The abstract of judgment was recorded with Kern County on September 20, 2018. Id. That lien attached to the debtor's interest in a residential real property in Wasco, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$242,749.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$218,250.00 on that same date, consisting of a first deed of trust in favor of USDA Rural Development. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$24,499.00. Id.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

8. [19-14651](#)-B-7      **IN RE: THOMAS SMITH**  
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
11-19-2019    [\[15\]](#)

THOMAS SMITH/MV  
SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Rule of Practice ("LBR") 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease, shall terminate with respect to the debtor on the 30th day after the filing of the later case.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-10562. That case was filed on February 18, 2019 and was dismissed on October 18, 2019 for failure to make plan payments. This case was filed on November 4, 2019 and the automatic stay will expire on December 4, 2019.

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 later 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 [the non-moving party] offered in opposition.'" Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted) (overruled on other grounds by Taggart v. Lorenzen, No. 18-489, 2019 U.S. LEXIS 3890 (June 3, 2019)).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed because debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc).

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

Debtor fell behind on making payments because he "was hospitalized due to ongoing chronic health problems. Doc. #17. Debtor wishes to "split" with the chapter 7 trustee the equity in his residence located at 1130 N. Patsy Drive in Porterville, CA. The residence is set for a foreclosure sale on December 10, 2019. Id.

Debtor is no longer seeking to live in his residence and is now living at the Veterans Administration living facilities in Fresno, CA, which has substantially decreased his living costs. Id.

The motion will be granted and the automatic stay extended for all purposes as to all parties who received notice, unless terminated by further order of this court. 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.

9. [19-14469](#)-B-7      **IN RE: IGNACIO REYES**  
[NES-1](#)

MOTION TO COMPEL ABANDONMENT  
10-29-2019    [\[9\]](#)

IGNACIO REYES/MV  
NEIL SCHWARTZ/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.

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

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

Debtor asks this court to compel the chapter 7 trustee to abandon the estate's interest in debtor's sole proprietorship business "Advantage Fire Protection." The assets include tools of the trade, equipment, accounts receivable (if any), and business-related assets ("Business Assets"). There has been no opposition to this motion.

The court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and exempted in their entirety. Therefore, this motion is GRANTED.

The order shall include a specific list of the property abandoned.

10. [19-11818-B-7](#) **IN RE: JONATHAN DOVICH**  
[DMG-3](#)

MOTION TO SELL  
11-13-2019 [\[40\]](#)

JEFFREY VETTER/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.  
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

This motion is GRANTED. 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."

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, No. 16-00327-GS, 2018 WL 6584772, at \*2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court



"should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at \*4, 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 Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The chapter 7 trustee asks this court for authorization to sell money on deposit in attorney Michael Carlovsky's client trust account, real property located at 325 East Harding Ave., Bakersfield, CA, a Naquitique boat and trailer, a steel floor 15 x 83 foot trailer, a 1967 Camaro, and the estate's interest in the business names and/or entities consisting of Dovichi Construction, Inc., Dovichi Properties, and Jonathan Docvichi Construction, Inc. ("Estate Assets") to John and Janet Dovichi, subject to higher and better bids at the hearing, for \$13,500.00.

The proposed buyers are the parents of the debtor, and therefore "insiders" as defined in 11 U.S.C. § 101(31)(A)(i). Sales to an insider are subject to heightened scrutiny. Alaska Fishing Adventure, LLC, 2018 WL 6584772, at \*2, citing Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC), 558 B.R. 500, 516 (1st Cir. BAP 2016).

It appears based on the evidence now before the court that the sale of the Estate Assets is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. Higher and better bids will be requested at the hearing. Unless opposition is presented at the hearing, the court intends to GRANT this motion.

10:30 AM

1. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**  
[MB-45](#)

CONTINUED AMENDED/MODIFIED PLAN  
8-4-2019 [[2409](#)]

MICHAEL COLLINS/ATTY. FOR DBT.  
JOHN MACCONAGHY/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order confirming the plan has already been entered. Doc. #2975.

2. [18-14663](#)-B-11 **IN RE: 3MB, LLC**  
[LKW-16](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)  
11-12-2019 [[290](#)]

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(a)(6) 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.

This motion is GRANTED. Movant is awarded \$9,877.50 in fees and costs of \$81.70.

3. [18-11651](#)-B-11     **IN RE: GREGORY TE VELDE**  
[JMB-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-1-2019    [[1985](#)]

RABOBANK, N.A./MV  
MICHAEL COLLINS/ATTY. FOR DBT.  
JOSEPH VANLEUVEN/ATTY. FOR MV.

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #2993.

11:00 AM

1. [19-12251](#)-B-7     **IN RE: MARTIN/BETSY MORENOVILLA**  
[19-1102](#)

STATUS CONFERENCE RE: COMPLAINT  
9-26-2019    [\[1\]](#)

ALPHA & OMEGA GARDENING, INC. V. DEMAY ET AL  
NATHANIEL OLESON/ATTY. FOR PL.

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

DISPOSITION:     Dropped from calendar.

ORDER:             The court will issue the order.

It appears that the plaintiff has not served the summons and complaint on the defendants. Debtor must request a new summons and serve the new summons and complaint on the defendants within seven days of the issuance of the new summons in accordance with the Federal Rules of Bankruptcy Procedure. When the new summons is issued, a new status conference will be set for hearing.

If a new summons is not promptly issued and service completed, the court will issue an order to show cause why this case should not be dismissed for lack of prosecution. The court warns counsel the complaint may be dismissed for lack of service. See Federal Rule of Civil Procedure 4(m) (applicable in adversary proceedings under Federal Rule of Bankruptcy Procedure 7004).

11:30 AM

1. [19-13446](#)-B-7      **IN RE: SALVADOR TEJEDA ARAMBULA AND CONCEPCION TEJEDA**

PRO SE REAFFIRMATION AGREEMENT WITH KERNS SCHOOL FEDERAL CREDIT  
UNION - 2013 GMC SIERRA  
10-22-2019    [\[29\]](#)

NO RULING.

2. [19-13446](#)-B-7      **IN RE: SALVADOR TEJEDA ARAMBULA AND CONCEPCION TEJEDA**

PRO SE REAFFIRMATION AGREEMENT WITH KERN SCHOOLS FEDERAL CREDIT  
UNION - 2014 DODGE CHARGER  
10-22-2019    [\[31\]](#)

NO RULING.

3. [19-13398](#)-B-7      **IN RE: GEORGE/DIANA MARTINEZ**

PRO SE REAFFIRMATION AGREEMENT WITH ONEMAIN FINANCIAL GROUP, LLC  
11-4-2019    [\[17\]](#)

WILLIAM OLCOTT/ATTY. FOR DBT.

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

DISPOSITION:      Dropped.

ORDER:              The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtors' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

The debtors shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.