UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Tuesday, December 20, 2022
Department B – Courtroom #13
Fresno, California

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. 22-11806-B-13 **IN RE: GUSTAVO/ARACELI CERVANTES**
MHM-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
12-6-2022 [13]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Continued to January 25, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to the confirmation of Gustavo Cervantes' and Araceli Cervantes' (collectively "Debtors") *Chapter 13 Plan* dated October 21, 2022 under Local Rule of Practice ("LBR") 3015-1(c)(4). Doc. #13. Trustee objects under 11 U.S.C. § 1325(a)(3) and (a)(7) because the plan has not been proposed in good faith and the filing of the petition was in bad faith. *Id.*

Trustee says that this case mirrors *In re Paley*, 390 B.R. 53 (Bankr. N.D.N.Y. 2008), in that Debtors cannot receive a chapter 7 discharge and are therefore in chapter 13 and proposing a plan with an insignificant distribution to unsecured creditors. *Id.* Essentially, Debtors' plan only proposes to pay attorney fees, so Debtors are in effect in a chapter 7 masquerading as a chapter 13 plan. *Id.*

Additionally, Debtors have presented a discrepancy in their income. The 6-month lookback period for disposable income is April 2022 through September 2022, but Debtors' Form 122C-1 indicates that Debtors received an average monthly income of $3,025.00 during that period of time. *Id.* Trustee says that Debtors' Wells Fargo Bank statement from June 8 through July 8, 2022 indicates deposits of $9,443.00 during that time. Further, Debtors provided a bank statement for A&G Transport Hauling Services LLC, but the Statement of Financial Affairs does not reflect any interest in an LLC, so Trustee is unable to determine whether the plan should be confirmed until more information is provided regarding the LLC.

Trustee's objection will be CONTINUED to January 25, 2023 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's objection to confirmation is withdrawn, the Debtors shall file and serve a written response not later than January 11, 2023. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or

undisputed, and include admissible evidence in support of Debtors' position. Trustee shall file and serve a reply, if any, by January 18, 2023.

If Debtors elect to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than January 18, 2023. If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without a further hearing.

2. 22-11319-B-13 **IN RE: JEBR ALFAREH**
MHM-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
9-29-2022 [15]

STEPHEN LABIAK/ATTY. FOR DBT.
DISMISSED 11/30/22

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Debtor Jebr A. Alfareh voluntarily dismissed this case on November 30, 2022. Doc. #30. Accordingly, the chapter 13 trustee's objection to confirmation of the plan will be OVERRULED AS MOOT.

3. 22-11354-B-13 **IN RE: CARLOS AVILA**
MHM-3

MOTION TO DISMISS CASE
11-17-2022 [42]

MICHAEL MEYER/MV
JAMES PIXTON/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause due to unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because the debtor has failed to make all payments due under the plan (11

U.S.C. § 1307(c)(4)). Doc. #42. Carlos Marcus Avila ("Debtor") did not oppose.

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

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

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to timely make payments due under the plan.

The record shows that Debtor is delinquent in the amount of $6,224.68. Doc. #44. Before this hearing, another payment in amount of $3,112.34 will also come due. *Id.*

Trustee has reviewed the schedules and determined that this case has a liquidation value of $4,141.50 after trustee compensation. This amount is comprised of the non-exempt equity in Debtor's 2013 Ford F150, 2008 Mercedes, and funds in the checking and savings accounts at the time of filing. Doc. #44. Since this amount will *de minimis* after chapter 7 expenses, dismissal, rather than conversion, serves the interests of creditors and the estate.

Accordingly, this motion will be GRANTED. The case will be dismissed.

4. 22-11559-B-13 **IN RE: MISAEL DELGADO AND VERONICA ZAMUDIO**
MHM-2

MOTION TO DISMISS CASE
11-22-2022 [51]

MICHAEL MEYER/MV
ARASTO FARSAD/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or continued to January 25, 2023 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") moves to dismiss this case for cause for the following reasons: (1) unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)); (2) failure to appear at the 341 meeting of creditors; (3) failure to cooperate with the trustee as required by 11 U.S.C. § 521(a)(3) and (a)(4) by failing to provide a profit and loss statement for Debtors' business; and (4) failure to file state tax returns for the years 2019, 2020, and 2021. Doc. #51.

Misael Cordero Delgado and Veronica Rivas Zamudio (collectively "Debtors") timely opposed. Doc. #58. Debtors believe they have resolved all of the issues raised in Trustee's motion and ask Trustee to withdraw the motion. In the alternative, Debtors ask the court to deny the motion to allow them to pursue this case to confirmation. *Id.*

This matter will be called and proceed as scheduled. The court is inclined to either GRANT the motion or CONTINUE the hearing to January 25, 2022 at 9:30 a.m. to be heard in connection with Debtors' proposed chapter 13 plan.

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 U.S. Trustee, or any other party in interest except Debtors 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).

As a preliminary matter, Debtors did not file a certificate of service to prove that they served their response on Trustee. LBR 9014-1(e)(1) and (e)(2) require service of all pleadings filed in support of a motion to be made on or before the date they are filed with the court, and proof of service, in the form of a certificate of service, to be filed with the clerk concurrently with the documents served, or not more than three days after they are filed.

Additionally, Debtors are advised that General Order 22-04 makes LBR 7005-1 effective as of November 1, 2022. *See* Gen. Order 22-04 (Oct. 6, 2022). LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users using the *Official Certificate of Service Form*, EDC 007-005. Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of downloaded. LBR 7005-1(d). Debtors' counsel is advised to the review the local rules and ensure procedural compliance in subsequent matters.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors.

Trustee has reviewed the schedules and determined that this case has a liquidation value of $3,582.00 after trustee compensation. Doc. #53. This amount is comprised of the value of Debtors' four vehicles and cash on hand at the time of filing. *Id.* But if Debtors amend the schedules, there may be non-exempt equity that could be realized for the benefit of unsecured claims if the case were converted to chapter 7.

First, Debtors apologize for unintended delay and believe that all essential documents have been provided to Trustee. Doc. #58. Debtors promise to provide any further documents or information requested in the future. *Id.*

Second, Debtors were fully prepared and ready to participate in the October 25, 2022 meeting of creditors. However, due to communication issues, they were unable to participate. Debtors were aware of and

appeared at the November 29, 2022 meeting of creditors, where it was concluded. Additionally, Debtors participated in a 2004 examination on November 15, 2022 and that was concluded as well.

Third, Debtors claim that they attached a profit and loss statement to their *Schedule I* filed on September 27, 2022, which reflects the period from January 1, 2022 through August 31, 2022. *Id.* At the 341 meeting, Trustee requested a 6-month profit and loss statement prior to filing, rather than an 8-month statement. Doc. #16. Debtors amended schedules on December 2, 2022, which also include a 6-month profit and loss statement prior to the filing. Doc. #55. A third amendment to the schedules was filed on December 9, 2022, which further includes a profit and loss statement from March 1, 2022 through August 31, 2022. Doc. #69.

Fourth, Debtors' accountant, Isaac Nieto, prepared and filed their 2019-21 tax returns on September 3, 2022. However, since Debtors' individual taxpayer identification number ("ITIN") had expired, Debtors applied for renewal of their ITIN on the same day. Doc. #58. The response states that Debtors' attorney has been in contact with the IRS agent who filed the proof of claim, Ms. Juanita Douglas, who indicated that the 2019-21 tax returns were received as of November 17, 2022. Although the 2019-20 returns have been posted, there is an issue with processing the 2021 return. As a result of this conversation, Ms. Douglas filed an amended proof of claim on December 5, 2022. *See* Claim 1-3.

This matter will be called and proceed as scheduled to inquire about Trustee's response to Debtors' opposition. Since Debtors have a pending chapter 13 plan confirmation hearing schedules for January 25, 2023, the court may, at the hearing, CONTINUE this motion to the same date and time as the confirmation hearing.

5. 20-11186-B-13 **IN RE: JOSE RECILLAS**
TCS-4

MOTION TO SELL
11-28-2022 [57]

JOSE RECILLAS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Jose C. Recillas ("Debtor") seeks authorization to sell the estate's interest in a 2016 Ford Edge ("Vehicle") to Carmaxx Auto Finance ("Proposed Buyer") for "the amount owed," which appears to be $15,004.42, subject to higher and better bids at the hearing. Doc. #57.

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

This motion was filed and served on at least 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure ("Rule") 2002(a)(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.

As a preliminary matter, the certificate of service indicates that exhibits in support of the motion were served on all parties in interest. Doc. #60. However, no exhibits were filed 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 property of the estate under § 363(b).

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners 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). This sale is to Proposed Buyer. Nothing in the record suggests that Proposed Buyer is an insider with respect to Debtor. Proposed Buyer is neither listed in the schedules as a creditor nor is listed in the master address list. Docs. ##1-2.

Vehicle is listed in the amended schedules as a 2016 Ford Edge SEL with 22,000 miles and valued at $22,498.00. *Am. Sched. A/B*, Doc. #16. As of the petition date, Vehicle was encumbered by a $26,182.00 purchase money security interest in favor of Golden 1 Credit Union ("Golden 1"). *Sched. D*, Doc. #1. Debtor did not exempt any equity in Vehicle. *Am. Sched. C*, Doc. #16.

Debtor's declaration states that Vehicle now has 56,000 miles and the remaining balance owed to Golden 1 is $15,004.42. Doc. #59. Due to value diminution in the 29 months since the petition date, Debtor says that there is currently no equity in Vehicle, implying that it is worth the same or less than the $15,004.42 owed to Golden 1. Proposed Buyer is willing to purchase Vehicle for the amount owed, which will allow Debtor to remove payments to Golden 1 from his plan. This will free up monthly income, which will allow Debtor to purchase a new vehicle, fund the new modified plan, and be successful in this bankruptcy case.

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 Debtor's 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 is no opposition to the sale, but written opposition was not required. It appears that the sale will pay off the entirety of Golden 1's security interest encumbering Property and also free up monthly net income for plan payments, or another vehicle. Debtors' business judgment appears to be reasonable and will be given deference.

This matter will be called as scheduled to inquire whether any party in interest opposes this motion. In the absence of opposition at the hearing, this motion will be GRANTED and proceed for higher and better bids. If opposition is presented, this matter will be continued and proceed as a scheduling conference.

Any party wishing to overbid must appear at the hearing and acknowledge that no warranties or representations are included with the property; it is being sold "as-is, where-is."

6. 22-10387-B-13 **IN RE: MATTHEW/MARGARET TORRES**
FW-2

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
11-22-2022 [66]

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.

Fear Waddell, P.C., attorney for Matthew Torres and Margaret Rose Torres (collectively "Debtors"), seeks compensation in the sum of $11,775.90 on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Doc. #66. This amount consists of $11,681.50 in fees as reasonable compensation for services rendered and of $94.40 for reimbursement of actual, necessary expenses from January 27, 2022 through October 31, 2022. *Id.*

Debtors executed a statement dated November 18, 2022 indicating that Debtors have read the fee application and approve the same. *Ex. E*, Doc. #68.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtors filed chapter 13 bankruptcy on March 11, 2022. The *Chapter 13 Plan* dated March 11, 2022, confirmed July 25, 2022 ("Plan"), is the operative plan in this case. Docs. #3; #52. Section 3.05 of the Plan

provides that Debtors paid Applicant $3,687.00 prior to filing the case, and, subject to court approval, Applicant will be paid $12,000.00 through the Plan by filing and serving a motion in conformance with 11 U.S.C. §§ 329 & 330, and Fed. R. Bankr. P. 2002, 2016, & 2017. Doc. #3. The *Disclosure of Compensation* Form B2030 provides that Applicant was paid $3,687.00 pre-petition. Doc. #1. However, the motion reveals that Applicant was also paid a $313.00 filing fee, resulting in payment of $4,000.00 to Applicant pre-petition. Doc. #66.

This is Applicant's first interim fee application. *Id.* Applicant's firm provided 67.60 billable hours of legal services at the following rates, totaling $15,368.50 in fees before application of the $3,687.00 retainer for legal fees:

Professional	**Rate**	**Hours**	**Fees**
Peter L. Fear (2022)	$425	1.50	$637.50
Gabriel J. Waddell (2022)	$345	29.00	$10,005.00
Katie Waddell (2022)	$245	0.80	$196.00
Kayla Schlaak (2022)	$125	36.00	$4,500.00
Laurel Guenther (2022)	$100	0.30	$30.00
Total Hours & Fees		**67.60**	**$15,368.50**
(-) Pre-petition payments for fees			$3,687.00
Total Fees Requested			**$11,681.50**

Id.; *Exs. B-C*, Doc. #68. Applicant also incurred $407.40 in expenses before application of the pre-petition payment for the $313.00 filing fee:

Copying	$35.50
Court fees	$313.00
Postage	$58.90
Total Costs	**$407.40**
(-) Pre-petition payment for filing fee	$313.00
Total Costs Requested	**$94.40**

Id. These combined requested fees and expenses total **$11,775.90.**

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

Applicant's services included, without limitation: (1) consulting with Debtors prior to filing the bankruptcy, preparing legal services agreement, communicating with Debtors, and analyzing case issues in preparation for filing; (2) preparing all necessary documents for filing this bankruptcy and conferring with Debtors to finalize those documents; (3) independently verifying the facts necessary to prepare the bankruptcy petition and other documents for filing this case; (4) conferring with Debtors to prepare multiple supplemental schedules to disclose post-petition changes to Debtors' income; (5) preparing for and appearing at the 341 meeting of creditors and communicating with Debtors regarding the same; (6) analyzing creditor correspondence, notice of post-petition fees, and communicating with a creditor regarding the automatic stay; (7) preparing the Plan, responding to two objections to confirmation (JCW-1; PD-1), and prevailing on confirmation; (8) analyzing relief from automatic stay motion, which was denied as moot; (9) preparing and filing a motion to extend the automatic stay due to previously dismissed bankruptcy case (FW-1); (10) preparing documents required by the chapter 13 trustee and communicating with Debtors regarding those documents; and (11) preparing and filing this fee application (FW-2). *Exs. A-C*, Doc. #68. The court finds the services and expenses actual, reasonable, and necessary. No party in interest timely filed written opposition and Debtors have consented to payment of the proposed fees. *Ex. E*, *id.*

Accordingly, this motion will be GRANTED. Applicant shall be awarded $15,368.50 in fees and $407.40 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review under § 330. After application of the $4,000.00 pre-petition payment (including the $313.00 filing fee), the chapter 13 trustee, in the trustee's discretion, will be authorized to pay Applicant up to $11,775.90 for services rendered and expenses incurred from January 27, 2022 through October 31, 2022.

7. 20-11193-B-13 **IN RE: MICHAEL WILKENING**
WSL-1

MOTION TO INCUR DEBT
12-6-2022 [25]

MICHAEL WILKENING/MV
GREGORY SHANFELD/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Michael Shawn Wilkening ("Debtor") seeks authorization to incur new debt for the purchase a 2019 Honda Accord Sedan with 71,501 miles, or a similar available vehicle on similar terms. Doc. #25.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("Rule") and Local Rules of Practice ("LBR").

First, the motion was filed on insufficient notice. LBR 3015-1(1)(h)(1)(A) allows a debtor, *ex parte* and with court approval, to finance the purchase of a motor vehicle if the trustee's written consent is filed with or as part of the motion. The trustee's approval is a certification to the court that: (i) all chapter 13 plan payments are current; (ii) the chapter 13 plan is not in default; (iii) the debtor has, in the last 30 days, evidenced the ability to pay all future plan payments, projected living and business expenses, and the new debt; (iv) the new debt is a single loan incurred to purchase a motor vehicle that is reasonably necessary for the maintenance or support of the debtor, a dependent of the debtor, or if debtor is engaged in business, is necessary for the continuation, preservation, and operation of the debtor's business; (v) the only security for the new debt will be the motor vehicle; and (vi) the new debt does not exceed $20,000.

If the trustee will not give consent, or if a debtor wishes to incur new debt on terms and conditions not authorized by subsection (h)(1)(A), the debtor may still seek court approval under LBR 3015-1(h)(1)(E) by filing and serving a motion on the notice required by Rule 2002 and LBR 9014-1. Under § 1306(a), incurring new debt secured by a new vehicle obtained after commencement of the case but before the case is closed, dismissed or converted will make that new vehicle property of the estate. Encumbering that new property is a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, so 21 days' notice to the trustee, all creditors, and parties in interest is required under Rule 2002(a)(2). Here, this motion was filed and served on December 6, 2022 and set for hearing on December 20, 2022. Docs. ##25-26. December 6 is 14 days before December 20, 2022, so the motion was filed on insufficient notice under Rule 2002(a)(2). Debtor did not file any requests for an order shortening time.

Second, the motion fails to comply with Rule 9013 and LBR 9014-1(d)(3)(A). Rule 9013 requires a request for an order to be by written motion, unless made during a hearing. "The *motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought*." Rule 9013 (emphasis added). This particularity requirement is restated in the local rules:

> The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and *shall state with particularity the factual and legal grounds therefor*. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request

> but does not include a discussion of those authorities or argument for their applicability.

LBR 9014-1(d)(3)(A). Here, the motion states that Debtor wants to purchase a vehicle and includes the terms of the loan. Doc. #25. Additionally, it states that on the petition date, Debtor was borrowing a vehicle to get around until he saved up enough money to purchase a 2004 Jeep Cherokee for $2,500.00 in January 2021. *Id.* However, that vehicle is no longer running and would cost more to fix than it is worth, so Debtor wants to purchase a newer, more reliable vehicle to travel to and from work. Debtor believes he can pay the proposed auto loan payment along with his chapter 13 plan payment and projected living expenses. *Id.*

This is insufficient. Although Debtor did include some of the required factual bases in the motion, it omits citation to any statutes or local rules. The elements required for approval of a motion to incur new debt are neither cited nor discussed. The elements of LBR 3015-1(h)(1)(A) and (h)(1)(E) are set forth above, but the motion fails to plead any of these elements with any particularity.

Third, Debtor has failed to submit adequate evidence in support of the motion. Here, Debtor's declaration fails to address the required elements of LBR 3015-1(h)(1)(A) or (h)(1)(E). Doc. #27. Specifically, no competent evidence has been presented that: (i) all chapter 13 plan payments are current; (ii) the chapter 13 plan is not in default; (v) the only security for the new debt will be the motor vehicle; and (vi) the new debt does not exceed $20,000.

The court acknowledges that the declaration addresses whether Debtor has the ability to repay the new debt plus his living expenses and the chapter 13 plan payment, which is supported by the amended schedules. *Id.*; *Am. Scheds. I-J*, Doc. #23. Additionally, the new debt appears to be a single loan incurred to purchase a vehicle reasonably necessary for the maintenance and support of Debtor.

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

Lastly, the court is not presently ruling on the merits of the proposed new loan. So, although not a reason for denial, the court is concerned with the terms of the proposed loan. Debtor wishes to incur $30,768.68 in new debt to be paid at 14.75% interest over 71 months. Docs. ##27-28. This less than favorable interest rate would result in Debtor paying more than $15,000 in interest over the life of the loan, not including title, registration, and other fees associated with the purchase of the vehicle. Though the court recognizes the necessity of vehicle ownership to allow Debtor to commute to and from his occupation, little information has been provided regarding Debtor's attempts to obtain a loan. Has Debtor shopped around to obtain the most favorable interest rate possible? Has Debtor considered alternate vehicles that come with more reasonable loan terms for a debtor emerging from a chapter 13 bankruptcy case? The court is not

enthusiastic at the prospect of burdening Debtor with a precarious $30,000+ debt at more than 14% interest for the next six years.

8. 22-10699-B-13 **IN RE: JESUS GUERRA**
ECJ-2

MOTION/APPLICATION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT
11-10-2022 [141]

MARK ADAMS/MV
HENRY NUNEZ/ATTY. FOR DBT.
SONIA SINGH/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

State Court Receiver Mark S. Adams ("Receiver") moves to extend the deadline for filing a complaint to determine the dischargeability of the debt owed by Jesus Lopez Guerra's ("Debtor") pursuant to 11 U.S.C. § 523 from November 13, 2022 to February 10, 2023. Doc. #141.

Neither Debtor nor any other 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.

Federal Rule of Bankruptcy Procedure ("Rule") 4007(c) requires a complaint to determine the dischargeability of a debt under § 523(c) to be filed no later than 60 days after the first date set for the § 341 meeting of creditors. The court may for "cause" extend the time

fixed on request of any party in interest, after notice and a hearing, and filed before the time has expired. Extension of time for "cause" under Rules 4004(b) and 4007(c) "should be granted liberally absent a clear showing of bad faith[.]" *In re Kellogg*, 41 B.R. 836, 838 (Bankr. W.D. Okla. 1984). "The moving party has the burden of proof to show cause to extend the time for matters relating to the debtor's discharge." *In re Bomarito*, 448 B.R. 242, 248 (Bankr. E.D. Cal. 2011), citing *In re Stonham*, 317 B.R. 544, 547 (Bankr. D. Colo. 2004).

The first 341 meeting here was scheduled for June 14, 2022. Doc. #40. Thus, the original 60-day deadline to file a § 523 complaint or a request for an extension of time was Saturday, August 13, 2022. Under Rule 9006(a)(2)(C), since the deadline falls on a Saturday, it would be extended to Monday, August 15, 2022.

On August 4, 2022, Receiver and Debtor jointly stipulated to extend the deadline to file a complaint to determine the dischargeability of debts for a period of 90 days, with the right to seek further extensions. Doc. #65. The court approved the stipulation on August 8, 2022. Doc. #66. The new deadline to file a § 523 complaint was extended to Sunday, November 13, 2022. Under Rule 9006(a)(2)(C), since the deadline falls on a Sunday, it would be extended to Monday, November 14, 2022. Therefore, Receiver timely filed this motion under Rule 4007(c).

Here, Receiver has been granted relief from the automatic stay so that its ongoing receivership action could proceed in state court. As of this writing, it is unclear whether the receivership action has concluded. Doc. #143. Given that it is impossible for Receiver to know the full extent of his potential claims against Debtor until the receivership action is resolved, Receiver is seeking slightly fewer than a 90-day extension of the deadline to file a complaint challenging the dischargeability of the debt owed to it by Debtor. Since the 90th day is Saturday, February 11, 2023, Receiver requests an 89-day extension of the deadline to February 10, 2023.

An extension of time will permit the state court receivership action time to conclude and allow Receiver to analyze whether he needs to file a dischargeability complaint under § 523(c). Nothing in the record suggests that Receiver has not established a reasonable degree of due diligence with respect to the deadline. Receiver timely stipulated to extend the deadline and now moves to extend it further. Additionally, there is no indication that Receiver has acted in bad faith.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Cause exists to extend the deadline for Receiver only to file a complaint to determine the dischargeability of certain debts under § 523 because the parties' ongoing state court receivership action has not yet concluded. The deadline for Receiver to file a dischargeability complaint under § 523 is extended up to and including February 10, 2023.

9. 22-10699-B-13 **IN RE: JESUS GUERRA**
MHM-3

MOTION TO DISMISS CASE
11-17-2022 [153]

MICHAEL MEYER/MV
HENRY NUNEZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or continued.

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") moves to dismiss this case for cause pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4) because Debtor has failed to make all payments due under the plan. Doc. #153. As of November 17, 2022, Debtor has failed to make all payments due under the plan and is delinquent in the amount of $4,260.00. Doc. #155. An additional plan payment of $1,050.00 became due on November 25, 2022 after this motion was filed and before it was heard. *Id.*

On December 6, 2022, super-priority secured creditor Community Improvement Capital, LLC ("CIC") filed a joinder to Trustee's motion. Doc. #165.

On December 7, 2022, Debtor's attorney filed a declaration in opposition to the motion indicating that Debtor has filed a *Fifth Modified Chapter 13 Plan* to cure the delinquency, a motion to confirm the proposed plan will be filed shortly, and all delinquent payments will be paid by Debtor prior to the hearing on Trustee's motion to dismiss. Doc. #167. However, this declaration was not timely filed 14 days before the hearing.

This matter will be called and proceed as scheduled to inquire whether Debtor has become current on plan payments under the proposed plan before the hearing. The court is inclined to either GRANT this motion or CONTINUE the hearing to the same date and time as Debtor's motion to confirm the plan.

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 except CIC to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the

above-mentioned parties in interest except CIC are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay and failure to make all payments due under the plan.

The record shows that there has been unreasonable delay by Debtor that is prejudicial to creditors because Debtor has failed to make all payments due under the proposed plan.

Trustee has reviewed the schedules and determined that this case has a liquidation value of $4,020.00 after trustee compensation. This amount consists of the value of Debtor's cash on hand and the funds in his bank account at the time of filing, and various second-hand personal items. Doc. #155. Since this amount will *de minimis* after chapter 7 trustee expenses, dismissal, rather than conversion, serves the interests of creditors and the estate.

Debtor's late response says that a new plan has been filed that will promptly be set for hearing. Further, Debtor promises that the delinquency will be paid prior to the hearing.

On December 12, 2022, Debtor filed the *Fifth Modified Chapter 13 Plan*. Doc. #173. It has not yet been set for hearing.

On December 15, 2022, Debtor filed supplemental declarations and exhibits. Docs. ##180-81.

This matter will be called as scheduled to inquire whether Trustee has received the payments due under Debtor's new proposed plan. If so, this motion may be CONTINUED to the date and time of the confirmation hearing on Debtor's proposed plan. If not, this motion may be GRANTED, and the case may be dismissed.

10. 22-10699-B-13 **IN RE: JESUS GUERRA**
LAK-1

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
9-21-2022 [87]

COMMUNITY IMPROVEMENT CAPITAL, LLC/MV
HENRY NUNEZ/ATTY. FOR DBT.
STEVEN KURTZ/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

This motion was originally heard on October 26, 2022, continued to December 14, 2022, and continued again to December 20, 2022. Docs. #131; #133; ##174-75.

Community Improvement Capital, LLC ("Movant") sought relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 209 S. O Street, Madera, CA 93637 ("Property"). Doc. #87.

Jesus Lopez Guerra ("Debtor") timely opposed. Docs. #99-102; #110; #127.

Movant responded. Docs. #112.

At the October 26, 2022 hearing, the court deemed this matter to be a contested matter in which the federal rules of discovery apply. Based on the record, the factual issues appeared to include: (1) the value of the Property; (2) the amount of Movant's equity cushion.

The legal issues appeared to include: (1) whether Movant is adequately protected; (2) whether cause exists to lift the automatic stay.

Doc. #131. Additionally, the court ordered: (1) continuance of this motion to December 14, 2022; (2) extension of the automatic stay through December 16, 2022; (3) the striking of certain pleadings; (4) Debtor to file any additional evidence not later than November 30, 2022; and (5) Movant to file any reply not later than December 7, 2022. Doc. #133.

Since then, the parties further stipulated to continue this motion one week to December 20, 2022 to be heard alongside the chapter 13 trustee's motion to dismiss, which is the subject of matter #9 above. Doc. #171; ##174-75. The court also ordered extension of the automatic stay to December 20, 2022 pursuant to 11 U.S.C. § 362(e)(2)(B)(ii). Doc. #178.

This matter will be called as scheduled to inquire about the parties' current positions.

11. 22-12054-B-13 **IN RE: ALEXANDER GUZZARDO**
PK-2

MOTION TO EXTEND AUTOMATIC STAY
12-15-2022 [15]

ALEXANDER GUZZARDO/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
OST 12/15

NO RULING.

10:00 AM

1. 22-11403-B-7 **IN RE: STANFORD CHOPPING, INC.**
SDN-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-6-2022 [79]

THE HUNTINGTON NATIONAL
BANK/MV
DAVID JOHNSTON/ATTY. FOR DBT.
SHERYL NOEL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

The movant, The Huntington National Bank ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to various logging equipment ("Equipment"). Doc. #79.

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

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

Stanford Chopping, Inc. ("Debtor") executed three promissory notes (collectively "Notes") in favor of Movant between July 2016 and October 2019. The Notes are cross-collateralized and perfected with recorded UCC-1 Financing Statements. The Notes, Financing Statements, and Equipment collateral to which they are secured are set forth in the accompanying exhibits. *See* Doc. #82. As of the petition date, the outstanding balance due under the Notes was $657,839.35. *Ex. J*, *id.*; Doc. #83.

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, at the time of filing, Debtor missed two pre-petition payments on two of the Notes, and 0.43 pre-petition payments on the third Note, in the total amount of $197,370.60, plus interest in the amount of $39,050.42 and late fees of $10,658.56. *Ex. J*, Doc. #82. The total accelerated balance due to Movant is $657,839.35. Additionally, as of the filing of this motion, Debtor has missed one post-petition payment in the amount of $53,628.98. Doc. #81.

The court also finds that the debtor does not have any equity in the Equipment and the Equipment is not necessary to an effective reorganization because debtor is in chapter 7. Movant values the Equipment at $310,000.00 and the amount owed to Movant is $657,839.35. Doc. #84. Even using Debtor's $390,000.00 valuation, Movant is still undersecured.

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. Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least one post-petition payment and the Equipment consists of various depreciating assets.

2. 22-10209-B-7 **IN RE: NOREEN GUZMAN**
BDB-2

FURTHER SCHEDULING CONFERENCE RE: MOTION TO AVOID LIEN OF PHILLIP ERKENBRACK
8-11-2022 [42]

NOREEN GUZMAN/MV
BENNY BARCO/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This motion was originally heard on August 30, 2022 and was continued to October 13, 2022. Docs. #50; #52.

Noreen Jone Guzman ("Debtor") sought to avoid a judicial lien in favor of Phillip Erkenbrack dba Hassle Free Small Claims & Collection Service ("Creditor") in the sum of $4,146.00 and encumbering

residential real property located at 346 Buena Vista Court, Merced, CA 95348 ("Property"). Doc. #19.

Creditor filed written opposition on August 29, 2022. Doc. #48. Creditor opposes the motion on the basis that Property is investment property rather than Debtor's residence or domicile, and Debtor lives in San Jose, California, not Merced, California. Creditor requests the court to set a briefing schedule so Creditor can further apprise the court of the issues regarding Debtor's claimed homestead exemption.

At the October 13, 2022 hearing, the court deemed the matter to be a contested matter and issued a scheduling order, which set this scheduling conference for hearing. Docs. #65; #67.

Since then, nothing new has been filed with respect to this motion. This matter will be called and proceed as scheduled.

The sole factual issue appears to be whether the subject real property is the debtor's residence.

The sole legal issue appears to be whether the debtor is entitled to claim a homestead exemption in the subject real property.

3. 22-11224-B-7 **IN RE: PAULETTA SEEBOHM**
FW-5

MOTION TO SELL AND/OR MOTION TO PAY
11-17-2022 [43]

JAMES SALVEN/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.
RESPONSIVE PLEADING

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.

Chapter 7 trustee James E. Salven ("Trustee") requests an order authorizing: (i) the sale of the estate's interest in residential real property located at 4504 N. Valentine Avenue, Apartment 182, Fresno, CA 93722-4065 ("Property") to Craig Mollison and Kimberly Kazanjian (collectively "Proposed Buyers") for $135,000.00 pursuant to 11 U.S.C. § 363, subject to higher and better bids at the hearing; and (ii) payment of 6% broker commission under 11 U.S.C. §§ 327(a), 328, and 330, to be split evenly between Berkshire Hathaway HomeServices California Realty ("Broker") and the buyer's real estate broker.

Doc. #43. Trustee also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 6004(h). *Id.*

The Bank of New York Mellon ("Secured Creditor") filed a statement of non-opposition to the motion. Doc. #49. Secured Creditor does not oppose entry of an order authorizing the sale of Property, but it cautions that it does not consent to a sale free and clear of its interest pursuant to § 363(f) unless it receives proceeds sufficient to satisfy its lien in full as determined by the lien's full balance and any corresponding payoff demand. *Id.*

No other parties in interest timely filed written opposition. This motion will be GRANTED and proceed for higher and better bids only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(2) and (a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest except Secured Creditor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Secured Creditor 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.

Pauletta Seebohm ("Debtor") filed chapter 7 bankruptcy on July 18, 2022. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first § 341 meeting of creditors on August 18, 2022. Doc. #5; docket generally. In the course of administering the estate, Trustee investigated the estate's assets, which included Property. On November 11, 2022, the court granted Trustee's motion to sell Property to a different buyer, but that sale was not completed. *See* Doc. #41; FW-3. Trustee now seeks to sell Property pursuant to 11 U.S.C. § 363(b) to Proposed Buyers. Doc. #43.

Compensation of Broker

This motion affects the proposed disposition and the Broker. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by movant here as to Broker and use the court's discretion to add a party under Civ. Rule 21.

Compensation is separate from the sale. Since payment of Broker's compensation and the sale are separate claims, the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent an

objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Trustee, having requested this relief, is deemed to have notice. Since no party timely filed written opposition, defaulted parties are deemed to have consented to application of this rule.

On August 16, 2022, Trustee moved to employ Broker to assist Trustee in carrying out the trustee's duties by selling property of the estate. Doc. #16. The court authorized Broker's employment on August 24, 2022 under 11 U.S.C. §§ 327 and 328. Doc. #21.

Pursuant to the employment order, Trustee requests to compensate Broker and the buyer's broker with a 6% commission to be split equally between Broker and the buyer's real estate broker. Doc. #43. Trustee believes that this is a reasonable compensation for the services performed by Broker, including listing Property for sale, soliciting offers, showing the Property, marketing the Property, and negotiating the terms of the sale with the buyer. *Id.*

If sold at the proposed sale price, Broker and the buyer's broker will split $8,100.00 in compensation: $4,050.00 each. The court will authorize Trustee to pay the brokers' compensation as prayed.

Proposed Sale

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*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 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., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). Trustee wishes to sell Property to Proposed Buyers. There is nothing in the record suggesting that Proposed Buyers are insiders with respect to Debtor. Proposed Buyers are neither listed in the schedules nor the master address list. Docs. #1; #4.

Trustee declares that he entered into a contract with Proposed Buyer to sell Property for $135,000.00. *See Ex. A*, Docs. ##45-46. The sale is subject to a number of relevant terms and conditions. Namely, Proposed Buyers have agreed that the sale of Property is as-is, where-is, the seller will do no repairs, the Trustee will pay the homeowners association ("HOA") move-out fee, the Proposed Buyers will pay the HOA move-in fee, and the sale is subject to bankruptcy court approval and potential overbids. Doc. #45.

Trustee includes a copy of the preliminary title report. *See Ex. B*, Doc. #46. Property is subject to a deed of trust securing an approximate $76,926.00 debt that was assigned to Secured Creditor. *Id.* Additionally, taxes are currently owed or in default. Both the deed of trust and the taxes will be paid through escrow. Doc. #45.

Additionally, the preliminary title report lists potential liens and charges payable to Camelot West Association in the amount of $1,064.09, which are HOA move-out fees. Trustee requests authority to pay off these move-out fees to the extent necessary to close the sale of the Property, but Proposed Buyers will be responsible for any HOA move-in fees. *Id.*

Debtor claimed an exemption in Property in the amount of $73,174.00 pursuant to Cal. Code Civ. Proc. § 704.730. Doc. #1. However, Debtor has agreed to equally divide the proceeds of the sale of the Property with the bankruptcy estate, capped at the amount of her exemption. Doc. #45.

If sold at the proposed sale price, the sale would be illustrated as follows:

Sale price	$135,000.00
Bank of NY Mellon deed of trust	- $76,926.00
Estimated taxes	- $1,350.00
Estimated HOA dues	- $1,064.09
Estimated costs of sale	- $2,700.00
Estimated broker fee (6%, split)	- $8,100.00
Estimated net proceeds	= $44,859.91
Estimated net proceeds to estate after division with Debtor	= **$22,429.96**

Id. The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will pay off the deed of trust and provide liquidity that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized to sell the Property to the prevailing bidder at the hearing and pay Broker and the buyer's broker for its services. Trustee is further authorized to pay all costs, commissions, and real property taxes directly from escrow.

Waiver of 14-day Stay

The only basis provided for waiver of the 14-day stay is Trustee's anticipation that no party will appeal this motion. Trustee's request for waiver of the 14-day stay of Rule 6004(h) will be DENIED because Trustee presents no legal or factual bases in support of such waiver. *See Paladino v. S. Coast Oil Corp. (In re S. Coast Oil Corp.)*, 566 F. App'x 594, 595 (9th Cir. 2014) (affirming waiver of 14-day stay because time was of the essence due to regulatory deadlines); *In re Ormet Corp.*, 2014 LEXIS 3071 (Bankr. D. Del. July 17, 2014) (finding cause to lift 14-day stay because the buyer required closing before the stay would expire). There do not appear to be any circumstances warranting waiver of the stay under Rule 6004(h).

Overbid Procedure

Any party wishing to overbid shall deposit with Trustee's counsel certified monies in the amount of $1,030.00 prior to the time of the sale motion hearing, provide proof in the form of a letter of credit, or some other written pre-qualification for any financing that may be required to complete the purchase of the Property sufficient to cover any necessary overbid amount, and provide proof that any successful overbidder can and will close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a Purchase Agreement for the Property. The successful overbid shall have the $1,030.00 deposit applied to the successful overbid price and unsuccessful bidders' deposits shall be returned at the conclusion of the hearing.

In the event a successful overbidder fails to close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a Purchase Agreement for the Property, the $1,030.00 deposit shall become non-refundable, and the next highest bidder shall become the buyer. Any party wishing to overbid may do so by making an appearance at the hearing or having an authorized representative with written proof of authority to bid on behalf of the prospective overbidder. All overbids shall be in the minimum amount of $1,000.00 such that the first of any overbid shall be in the minimum amount of $136,000.00.

The sale of Property is in "as-is" condition with no warranty or representations, express, implied, or otherwise by the bankruptcy estate, the Debtor, or their representatives.

4. 01-61942-B-7 **IN RE: RICHARD WARREN**
FW-4

MOTION TO APPROVE COMPROMISE OF PRODUCT LIABILITY CLAIM AND/OR MOTION FOR COMPENSATION BY THE LAW OFFICE OF FARAH & FARAH, P.A. FOR CHUCK FARAH, SPECIAL COUNSEL(S)
11-18-2022 [44]

JAMES SALVEN/MV
DAVID ADALIAN/ATTY. FOR DBT.
PETER SAUER/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order with a copy of the stipulation attached as an exhibit. The stipulation shall also be separately filed and docketed as a stipulation.

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving the compromise of a products liability claim as part of a litigation settlement program pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #44. Trustee also requests authority to pay the estate's special counsel, Weitz & Luxenberg, P.C. ("W&L") and Farah & Farah, P.A. ("F&F" or collectively, "Special Counsel"), a 33.33% contingency fee under 11 U.S.C. §§ 328 and 330. *Id.*

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(3) and (a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

BACKGROUND

Richard Llewellyn Warren and Karen Sue Warren (collectively "Debtors") filed chapter 7 bankruptcy on December 28, 2001. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341 meeting of creditors held on January 31, 2002. Doc. #2; docket generally. Debtors received an order of discharge on April 4, 2002 and the case was closed by final decree on April 9, 2002. Docs. ##8-9.

Prior to filing bankruptcy, joint debtor Richard Llewellyn Warren was exposed to an allegedly toxic chemical in the 1970's. Docs. #41; #46. Debtor alleges that this exposure resulted in a diagnosis of non-Hodgkin lymphoma in the 2010's.

Thereafter, Debtor retained F&F to pursue a product liability claim against the manufacturer of the allegedly toxic chemical, the exposure to which resulted in his diagnosis of Non-Hodgkin's Lymphoma ("Liability Claim"). Debtor's retainer agreement with F&F provides that F&F is entitled to a thirty-three and a third (33.33%) contingency fee of the gross recovery of proceeds, if any, made from the prosecution of the Liability Claim, plus costs. It also provides that F&F is authorized to associate co-counsel to effectuate its representation. F&F opted to associate W&L as co-counsel. *Id.* W&L will share any contingency fee with F&F on a 60/40 basis.

Twenty years later, following disclosure of the settlement, the United States Trustee moved to reopen the case after learning that the Debtors failed to schedule an interest in the Liability Claim, which was property of the bankruptcy estate. Doc. #10. The case was reopened on December 17, 2021. Doc. #11. Trustee was appointed as successor trustee on December 20, 2021. Doc. #13. Trustee filed a *Notice of Assets* on December 31, 2021. Docket generally.

On October 3, 2022, the court approved the estate's retention of Special Counsel pursuant to §§ 327(e) and 320. Doc. #43. Special Counsel's compensation was fixed under § 328(a) to a 33.33% contingency fee of the gross settlement proceeds, plus fees and costs incurred, subject to approval of the settlement under Rule 9019 and a request for compensation under § 330. *Id.*

Additionally, the court approved a stipulation between Trustee and Debtor to split the net proceeds after payment of compensation evenly between Debtor and the estate. Doc. #42. However, no order approving that stipulation has been submitted for signing and entered on the docket.

The manufacturer of the allegedly toxic chemical agreed to resolve the Liability Claim and other similar cases through the W&L Private Resolution Program (the "Program"), which is overseen by an independent claim administrator that evaluates each individual claimant's claim and assigns a point value based on a variety of

proprietary factors. Docs. #41; #46. Through the Program, the estate and Debtor have been offered a gross settlement of $256,352.25, which is subject to the following deductions:

Gross Settlement Offered	$256,352.25
33⅓% Contingency Fee (split 40/60 by F&F & W&L)	($85,450.75)
Special Counsel's Costs	($286.46)
Administration Fees	($750.00)
Lien Holdbacks	($104.90)
Net proceeds split between Debtor and estate	$167,760.14
50% of net proceeds to estate	**$84,880.07**

Doc. #46. Marie Ianniello-Occhigrossi, associated with W&L, declares that the Program is unlike mass tort proceedings in that it is available only to those represented by W&L. *Id.* If the settlement is not approved, the claim would not process through the Program and W&L would not proceed with the litigation of this case because it would jeopardize its ability to participate in the Program in its other cases. *Id.*

DISCUSSION

Approval of Settlement Agreement

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is,

1. Probability of success in litigation: Trustee says that approving the compromise is better for the estate because it is unlikely that Trustee would obtain a better resolution in this action than what is before the court now. Doc. #44.

First, the offer is only available to those represented by W&L and eligible to participate in the Program. If not accepted, the Liability Claim's eligibility in the program would be eliminated and W&L would cease representation of the debtor. Doc. #46.

Second, Trustee would be required to hire new counsel. The manufacturer established the Program specifically for W&L due to its

and F&F's aggressive representation and reputation known to the manufacturer. The manufacturer would likely not extend the same opportunity to resolve claims to other counsel. Doc. #44.

Third, this is a highly complex case, which makes probability for success less certain. Doc. #46. Juries and courts in tort litigation are often unpredictable. Discovery would be extensive and include nearly five decades of medical history discovery, much longer period of product development discovery, and require specialized and technical chemical experts, medical experts, and damages experts. The cost of litigating the claim alone would likely exceed the value of this settlement. *Id.*

2. Difficulties in collection: Collection is not at issue if the settlement agreement is approved because a third-party settlement administrator is responsible for handling the settlement funds, the balance of which will be remitted to the bankruptcy estate. Further, the manufacturer has already seeded the Program. *Id.* If not approved, collection will require years of litigation and potentially an appeals process. This factor supports approval.

3. Complexity of litigation: As noted above, the litigation is highly complex and would involve significant discovery. This case is not being treated as litigation at the present because it is included in the Program. Disclaiming the settlement would require initiation of litigation. Given that the alleged exposure occurred in the 1970s resulting in Debtor's cancer in the mid-2010s, such litigation may be barred by a statute of limitations. Lastly, causation alone is highly complicated given the five-decade timespan from the alleged exposure, and evaluation of potentially intervening causes alone would require extensive expert discovery likely to exceed the amount offered here.

4. Interests of creditors: This case was previously closed as a "no asset" case. Approval of the settlement will result in a net to the estate of $84,880.07 after payment of attorneys' fees, costs, and liens. Trustee therefore believes that the settlement is fair and equitable and in the best interests of creditors and the estate. Doc. #47.

Therefore, the settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

Compensation

This motion affects the proposed disposition and Special Counsel. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by Trustee here as to Special Counsel and use the court's discretion to add the two parties under Civ. Rule 21.

Compensation is separate from approval of the settlement agreement. Since payment of Special Counsels compensation and approval of the settlement agreement are separate claims, the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent an objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Trustee, having requested this relief, is deemed to have notice. Since no party timely filed written opposition, defaulted parties are deemed to have consented to application of this rule.

As noted above, the court previously approved Special Counsel's employment by the estate and set its compensation at a 33.33% contingency fee on gross settlement proceeds, plus fees and costs. Doc. #43. The order approving the settlement provided for a "33.33%" contingency fee, but the employment motion and supporting declarations specified a "thirty-three and a third (33.33%)" contingency fee. *Id.*; *cf.* Docs. #24; ##26-27. This 0.003$\overline{3}$% difference amounts to approximately $8.55 in fees should the employment order be strictly construed. Given the *de minimis* difference in fees requested here, the court will construe the "33.33%" as a clerical error intending to provide for a contingency fee of "thirty-three and one third." Trustee will be authorized to pay Special Counsel's fees as prayed.

Conclusion

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED, and the settlement agreement approved. The court concludes that the compromise is in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.* Trustee will also be authorized to pay Special Counsel its contingency fee as prayed.

The proposed order shall include an attached copy of the stipulation as an exhibit.

Additionally, the settlement agreement has not been separately filed on the bankruptcy docket as a stipulation, so the parties will need to separately file a copy prior to lodging an order approving the settlement. If Trustee is unable to file a copy of the settlement agreement because it contains confidential or proprietary information, then Trustee will need to either file a redacted version of the settlement or request an order to file it under seal.

5. 21-10762-B-7 **IN RE: STEVEN/SANDRA SLUMBERGER**
DMG-6

MOTION FOR COMPENSATION FOR D. MAX GARDNER, TRUSTEES ATTORNEY(S)
11-29-2022 [74]

PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

D. Max Gardner ("Applicant"), general counsel for chapter 7 trustee James Edward Salven ("Trustee"), requests final compensation in the sum of $20,733.02. Doc. #74. This amount consists of $20,507.50 in fees and $225.52 in expenses from July 1, 2021 through December 20, 2022. *Id.*

Trustee filed a declaration stating that he has reviewed the fee application and has no objection to payment of the proposed compensation. Doc. #79.

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

This motion was filed and served on 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Fed. R. Bankr. P. 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.

Steven Norman Slumberger and Sandra Sims Slumberger (collectively "Debtors") filed chapter 7 bankruptcy on March 30, 2021. Doc. #1. That same day, Trustee was appointed as interim trustee. Doc. #3. Trustee became permanent trustee at the first 341 meeting of creditors on April 23, 2021. Docket generally. Thereafter, Trustee employed Applicant as general counsel under 11 U.S.C. §§ 327, 329-31 on July 15, 2021, effective June 7, 2021. Doc. #31. The employment order provided that no compensation is permitted except upon court order following application under §§ 330(a) and/or 331. Applicant's services here were within the authorized time period.

This is Applicant's first and final fee application. Applicant's firm provided 65.10 billable hours at the following rates, totaling **$20,507.50** in fees:

Professional	Rate	Billed	Total
D. Max Gardner	$325	61.10	$19,857.50
D. Max Gardner	$163	4.00	$650.00
Total Hours & Fees		**65.10**	**$20,507.50**

Doc. #74; *Ex. A*, Doc. ##76-77. Applicant also incurred **$225.52** in expenses:

Printing/Copying	$40.82
Mailing/Postage	$162.20
Courtcall Charge	$22.50
Total Costs	**$225.52**

Id. These combined fees and expenses total **$20,733.02.**

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

Applicant's services included, without limitation: (1) obtaining authorization for employment (DMG-1); (2) administrating the chapter 7 case; (3) obtaining approval for the sale of estate's interest in an automobile (DMG-2); (4) preparing and filing an omnibus objection (DMG-3; DMG-4) to proofs of claim against Debtors' company, Cable Links Construction Group, Inc. that is also in chapter 7 under case no. 21-10316, which substantially increased available estate funds in this case; (5) reviewing and asserting a potentially avoidable transfer to an insider of Debtor, which resulted in a settlement of $250,000, not including the estate's retention of approximately $299,328.34 from a partnership distribution, sale, and payments previously paid (DMG-5); and (6) preparing and filing this fee application (DMG-6). *Ex. A*, Docs. ##76-77. The court finds the services and expenses actual, reasonable, and necessary. No party in interest timely filed written opposition and Trustee has consented to payment of the proposed fees. Doc. #79.

Accordingly, this motion will be GRANTED. Applicant shall be awarded $20,507.50 in fees and $225.52 in expenses on a final basis under 11 U.S.C. § 330. Trustee will be authorized, in Trustee's discretion, to

pay Applicant $20,733.02 in compensation for services rendered and expenses incurred from July 1, 2021 through December 20, 2022. *Id.*

6. 22-11170-B-7 **IN RE: DOUA YANG**
APN-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-17-2022 [70]

TOYOTA MOTOR CREDIT
CORPORATION/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2017 Lexus RX350 ("Vehicle"). Doc. #70.

Neither Doua Yang ("Debtor") nor any other 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 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 has produced evidence that Debtor has missed one pre-petition payment in the amount of $580.31, and two post-petition payments totaling $1,161.34. Docs. ##72-73. The total amount owed by Debtor to Movant is $28,652.16. Therefore, "cause" exists to lift the automatic stay under § 362(d)(1).

The court declines finding that Debtor does not have any equity in the Vehicle. Although this is a chapter 7 case and the Vehicle is not necessary for an effective reorganization, the moving papers indicate that Debtor has approximately $5,573.00 in equity. Doc. #72. Relief under § 362(d)(2)is moot because there is "cause" to grant the motion under § 362(d)(1).

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least three (3) payments to Movant and the Vehicle is a depreciating asset. No other relief is awarded.

7. 18-10475-B-7 **IN RE: GREGORY/DEBORAH SMITH**
FW-1

MOTION TO AVOID LIEN OF PAZIN AND MYERS, INC.
11-22-2022 [99]

DEBORAH SMITH/MV
PETER FEAR/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.

Gregory Howard Smith and Deborah Cherie Smith (collectively "Debtors") for Pazin & Myers, Inc. ("Creditor") in the sum of $64,775.85 and encumbering residential real property located at 676 Bedford Avenue, Clovis, CA 93611 ("Property").[1]

No party in interest timely filed written opposition.[2] This motion will be GRANTED.

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

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

Here, a judgment was entered in favor of Creditor against joint debtor Gregory H. Smith in the amount of $64,775.85 on December 21, 2017. *Ex. A*, Doc. #101. The abstract of judgment was issued on December 29, 2017 and was recorded in Fresno County on January 18, 2018. *Id.* That lien attached to Debtors' interest in Property. Doc. #102.

As of the petition date, Property had an approximate value of $417,046.00. *Id.; Am. Sched. A/B*, Doc. #18. Debtors claimed a homestead exemption in Property in the amount of $175,000.00 pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Am. Sched. C*, *id.*

Property is encumbered by a deed of trust with a principal amount of $339,500.00 in favor of Mortgage Electronic Registration Systems, Inc. (MERS) as nominee of American Financial Network, Inc., a California Corporation, dated June 1, 2016 and recorded June 3, 2016. Doc. #102. On the petition date, Cenlar was the servicer, and the amount due and owing was $331,008.98. *Id.; cf. Sched. D*, Doc. #1.

Property is also encumbered by a financing statement in favor of Solar Mosaic, Inc. ("Solar Mosaic"), which was recorded on August 23, 2017, as continued June 22, 2022. *Id.;* Doc. #102. On the petition date, the amount due and owing on this financing statement was $31,840.18. *Id.* However, it is unclear whether this financing statement is secured by

Property, or if it is instead secured only by the solar panels to which the financing statement relates. Solar Mosaic did not file a proof of claim, so the court is unable to review the financing statement in question. That said, even if Solar Mosaic's security interest did not encumber Property, there is still insufficient equity for Creditor's lien to attach.

Strict application of the § 522(f)(2) formula with respect to Creditor's lien is as follows:

Amount of judgment lien	$64,775.85
Total amount of unavoidable liens[3]	+ $339,500.00
Debtors' claimed exemption in Property	+ $175,000.00
Sum	= $579,275.85
Debtors' claimed value of interest absent liens	- $417,046.00
Extent lien impairs exemption	= $162,229.85

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property		$417,046.00
Total amount of unavoidable liens	-	$339,500.00
Homestead exemption	-	$175,000.00
Remaining equity for judicial liens	=	($97,454.00)
Creditor's judicial lien	-	$64,775.85
Extent Debtors' exemption impaired	=	($162,229.85)

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

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall state that the lien is avoided from the subject Property only and include a copy of the abstract of judgment attached as an exhibit.

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[1] Debtors complied with Fed. R. Bankr. P. 7004(b)(3) by serving its Chief Executive Officer, James W. Myers, on November 22, 2022. Doc. #103.
[2] A copy of a letter from First Corporate Solutions, Inc. was filed on December 5, 2022. Doc. #106. In that letter, First Corporate Solutions, Inc. indicates that it is not Creditor's registered agent for service. Although Rule 7004(b)(3) permits service on a corporation by serving its registered

agent for service of process, proper service may also be accomplished by serving an officer of the corporation, which Debtors did. Doc. #103. Therefore, service on the correct registered agent for service of process was not necessary here.

[3] As noted above, the court excluded the Solar Mosaic financing statement because it was unclear whether it encumbers Property or solely encumbers the solar panels. If this distinction could potentially change the outcome of this ruling, the court would require further evidence to determine whether it does or does not encumber Property. However, because such distinction would not change the outcome here, the court has assumed the less favorable option for lien avoidance: that it does not encumber Property, thus leaving more equity available for judicial liens to attach.

8. 22-11907-B-7 **IN RE: FREON LOGISTICS**
DW-1

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY .
12-15-2022 [307]

TBK BANK, SSB/MV
LEONARD WELSH/ATTY. FOR DBT.
RACHEL STOIAN/ATTY. FOR MV.
OST 12/16/2022

NO RULING.

9. 22-11907-B-7 **IN RE: FREON LOGISTICS**
HSM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-14-2022 [294]

SIGNATURE FINANCIAL LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
THOMAS GRIFFIN/ATTY. FOR MV.
OST 12/16/2022

NO RULING.

10:45 AM

1. 22-11907-B-11 **IN RE: FREON LOGISTICS**
BJ-1

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RECOVERY AND DISPOSITION OF PERSONAL PROPERTY COLLATERAL , MOTION FOR ADEQUATE PROTECTION
11-30-2022 [127]

PACCAR FINANCIAL CORP./MV
LEONARD WELSH/ATTY. FOR DBT.
THOMAS MOUZES/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or continued.

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

PACCAR Financial Corp. ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to two contracts secured by five 2023 Kenworth T680 trucks ("Vehicles"). Doc. #127.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court may GRANT the motion provided that the chapter 7 trustee consents to stay relief at or before the hearing. Otherwise, the matter will be CONTINUED to a date determined at the 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. 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.

Freon Logistics ("Debtor") executed two Security Agreement and Retail Installment Contracts (collectively "Contracts") in favor of Movant in June of 2022. Doc. #129. The Contracts are cross-collateralized and perfected with recorded Certificates of Title, which are set forth in the accompanying exhibits. *See* Doc. #132. As of the petition date, the total outstanding balance due under the Contracts was $817,781.56.

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, as of the petition date, Debtor is delinquent in the sum of $817,781.56. Doc. #129. Additionally, Debtor has failed to maintain insurance on the Vehicles. *Id.*; Doc. #131.

The court also finds that the debtor does not have any equity in the Vehicles and the Vehicles are not necessary to an effective reorganization because Debtor is in chapter 7. Movant values the Vehicles at $800,000.00 and the amount owed is $817,781.56.

However, an order converting this case to chapter 7 was entered on December 14, 2022. Doc. #290. Jeffrey M. Vetter ("Trustee") has been appointed as the chapter 7 trustee. Doc. #291. The court cannot order relief against the Trustee without further motion or stipulation with the Trustee.

This matter will be called as scheduled to inquire whether any party in interest opposes. If Movant obtains Trustee's written or verbal consent at or before the time of the hearing, this motion may be GRANTED pursuant to 11 U.S.C. § 362(d)(1) and (d)(2). Otherwise, this motion will be CONTINUED to a date and time to be determined at the hearing so that Movant can serve on Trustee the motion, supporting documents, and notice of a continued hearing.

2. 22-11907-B-11 **IN RE: FREON LOGISTICS**
GRI-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-29-2022 [114]

FRUITVALE FINANCIAL, LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
LAUREN RODE/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Fruitvale Financial, LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to commercial

real property located at 235 Mt. Vernon, Bakersfield, CA 93307 ("Property"). Doc. #119.

Though not required, Freon Logistics ("Debtor") opposed, claiming that it expects to receive a formal, written offer for the sale of Property for $1.8 million "within the next 7 to 10 days[.]" Doc. #203.

Notwithstanding Debtor's opposition, this motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

For motions filed on less than 28 days' notice, LBR 9014-1(f)(2)(C) requires the movant to notify respondents written opposition is not required and any opposition to the motion must be presented at the hearing.

Here, the motion was filed and served on November 30, 2022, and set for hearing on December 20, 2022. Doc. #114. November 30, 2022 is 20 days before December 20, 2022. Therefore, this motion was set for hearing on less than 28 days' notice under LBR 9014-1(f)(2). However, the notice stated:

> This Motion is being heard on regular notice pursuant to Local Bankruptcy Rule 9014-1. If you wish to oppose this Motion, you must file a written response to this Motion with the Bankruptcy Court and serve a copy of it upon the Movant no less than 14 calendar days before the above hearing and appear at the hearing of this Motion.
>
> . . .
>
> If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief and strike any untimely written opposition.

Doc. #115 at 1-2. This is incorrect. Because the hearing was set on less than 28 days' notice, LBR 9014-1(f)(2) is applicable and the notice should have stated that written opposition was not required, opposition, if any, shall be presented at the hearing, and if opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs. Instead, the respondents were told to file and serve written opposition even though it was not necessary. Additionally, that written opposition was due six days after this motion was filed, according to the notice.

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

Second, though not presently a reason for denial, an order converting this case to chapter 7 was entered on December 14, 2022. Doc. #290. Jeffrey M. Vetter ("Trustee") has been appointed as the chapter 7 trustee. Doc. #291. The court cannot order relief against the Trustee without further motion or stipulation with the Trustee.

3. 22-11907-B-11 **IN RE: FREON LOGISTICS**
PFR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
11-21-2022 [74]

BMO HARRIS BANK N.A./MV
LEONARD WELSH/ATTY. FOR DBT.
PAUL READY/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or continued.

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

BMO Harris Bank, N.A. ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to various trucks and trailers ("Vehicles"). Doc. #74.

One day after this motion was filed, Movant filed a notice and motion to approve a stipulation to modify the automatic stay, which included an attached stipulation granting Movant stay relief. Doc. #100.

On December 6, 2022, Debtor filed non-opposition stating that it does not oppose (1) the motion, (2) termination of the stay to the extent it applies to Movant's collateral, and (3) authorizing Movant to take possession of and foreclose on its collateral under California law. Doc. #206.

No other parties in interest timely filed written opposition. However, since this case was converted after the motion was filed, this hearing will be called and proceed as scheduled. This motion may be GRANTED provided that the chapter 7 trustee consents to stay relief at or before the hearing. Otherwise, the matter will be CONTINUED to a date determined 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 U.S. Trustee, or any other party in interest except the chapter 7 trustee to file written opposition at least 14 days prior to

the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except the chapter 7 trustee are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Debtor executed multiple Loan and Security Agreements (collectively "Loan Agreements") in favor of Movant between August 2021 and July 2022 for the purchase of the Vehicles. Doc. #76; *Exs. A-B*, Doc. #77. The Loan Agreements Contracts are perfected with recorded Certificates of Title, which are set forth in the accompanying exhibits. *See* Doc. #78. As of the petition date, the total outstanding balance due under the Loan Agreements was $5,678,359.57.

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 Debtor has missed 3 pre-petition payments, two post-petition payments, and is past due in the amount of $5,678,359.57. Docs. #76, #78. Additionally, Debtor has failed to maintain insurance and has stipulated to relief from stay with Movant. *Id.*; Doc. #100.

The court also finds that the debtor does not have any equity in the Vehicles and the Vehicles are not necessary to an effective reorganization because debtor is in chapter 7. Movant values the Vehicle at $4,600,000.00, which makes Movant undersecured.

However, an order converting this case to chapter 7 was entered on December 14, 2022. Doc. #290. Jeffrey M. Vetter ("Trustee") has been appointed as the chapter 7 trustee. Doc. #291. The court cannot order relief against the Trustee without further motion or stipulation with the Trustee.

This matter will be called as scheduled to inquire whether Trustee opposes. If Movant obtains Trustee's written or verbal consent at or before the time of the hearing, this motion may be GRANTED pursuant to 11 U.S.C. § 362(d)(1) and (d)(2). Otherwise, this motion will be CONTINUED to a date and time to be determined at the hearing so that Movant can serve Trustee the motion, supporting documents, and notice of a continued hearing.

4. 19-10423-B-12 **IN RE: KULWINDER SINGH AND BINDER KAUR**
MHM-3

MOTION TO DISMISS CASE
11-15-2022 [307]

MICHAEL MEYER/MV
DAVID JOHNSTON/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

Chapter 12 trustee Michael H. Meyer ("Trustee") moves to dismiss the chapter 12 case of Kulwinder Singh and Binder Kaur (collectively "Debtors") pursuant to 11 U.S.C. § 1208(c) and (c)(6) for failure to maintain the required payments to Trustee, failure to timely make payments, and payment of negotiable instruments that have sufficient funds to allow for payment, and material default with respect to the terms of a confirmed plan.

Debtors timely filed written opposition on December 6, 2022, claiming that as of that date, Debtors are either current, or almost current. Doc. #309.

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

11 U.S.C. § 1208(c) permits the court, on request of a party in interest, and after notice and a hearing, to dismiss a cause under this chapter for cause, including material default by the debtor(s) with respect to a term of a confirmed plan. § 1208(c)(6).

Here, Trustee declares that Debtors have failed to make 7 of the 32 months of payments in this case. Doc. #309. On October 28, 2022, Debtors delivered Trustee a check in the sum of $8,082.00 written on an account with the name "MF Trucking, Inc." The check was posted to Debtors' case and deposited in the bank. On October 31, 2022, Trustee distributed to six creditors checks totaling $14,750.28. *Id.* But on

November 1, 2022, Trustee was notified that the $8,082.00 check was returned for non-sufficient funds. Upon this notification, Trustee stopped payment on the six checks. As of October 31, 2022, Debtors are delinquent in the sum of $8,527.35. *Id.*

In response, joint debtor Binder Kaur declares that a $8,260.00 check was delivered to Trustee on or about November 15, 2022, and another $8,240.00 check was delivered on or about November 28, 2022. Doc. #312. Debtors understand that all future payments must be made by cashier's check to ensure no future checks are dishonored. *Id.*

Additionally, Debtors received a $16,650.00 payment for a farm program, which they deposited into their bank accounts on December 3, 2022. The entirety of the funds will be available to withdraw on December 9, 2022. *Id.* As soon as they become available to withdraw, Debtors will obtain a cashier's check in the full amount of this check and deliver it to Trustee to cover the payments due in December and January. *Id.*

Debtors have also been notified that their raisin crop is 40 tons, which should result in receipt of $2,000 per ton this year. *Id.* This amount will be paid out in the first six months of 2023 and should total $80,000. Debtors anticipate the first payment in January 2023 to be approximately $25,000-$30,000, which should be sufficient to make payments due through May of 2023. Debtors anticipate that the remaining payments should be sufficient through summer of 2023.

Further, Debtors are working with a family member on a transaction to pay all of their debts through refinance or sale of their property, which should be ready to close by June of 2023. *Id.* This refinance or sale will pay all secured debt on the property, chapter 12 trustee fees, and all unsecured claims in this case. *Id.*

Lastly, Debtors say that the reason the check was dishonored was due to an issue with their trucking broker. *Id.* When writing the check to Trustee, Debtors checked their phone banking app, which showed sufficient funds to cover the check to Trustee. However, later Debtors discovered that the trucking broker had apparently reversed an ACH payment because he was missing some paperwork. It was later discovered that he did in fact have all of the paperwork, so those funds were released to Debtors. This did not occur until after the bank had dishonored the check to Trustee. Debtors were able to obtain a replacement cashier's check on November 15, 2022 and will only pay Trustee in certified funds going forward. *Id.*

This matter will be called as scheduled to inquire about Trustee's response to Debtors' opposition and whether Trustee received the certified funds. If Debtors have cured the delinquency, this motion may be DENIED WITHOUT PREJUDICE.

5. 22-11540-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
WJH-14

MOTION FOR ENTRY OF ORDER FIXING A BAR DATE FOR FILING CERTAIN ADMINISTRATIVE EXPENSE CLAIMS AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF
11-28-2022 [145]

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine: (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at http://www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the notice of hearing did not apprise respondents regarding pre-hearing dispositions on the court's website. Doc. #146.

6. 22-10947-B-11 **IN RE: FLAVIO MARTINS**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
6-1-2022 [1]

HAGOP BEDOYAN/ATTY. FOR DBT.

NO RULING.

7. 22-10947-B-11 **IN RE: FLAVIO MARTINS**
MB-12

FINAL HEARING RE: AMENDED MOTION TO USE CASH COLLATERAL, AMENDED MOTION FOR ADEQUATE PROTECTION .
10-6-2022 [204]

FLAVIO MARTINS/MV

HAGOP BEDOYAN/ATTY. FOR DBT.

NO RULING.

The court is in receipt of debtor-in-possession Flavio Almeida Martins' ("Debtor") declaration and Final Budget. Docs. ##276-77. This final cash collateral motion will be called and proceed as scheduled.

8. 22-10947-B-11 **IN RE: FLAVIO MARTINS**
MB-18

MOTION TO DISMISS CASE
11-22-2022 [266]

FLAVIO MARTINS/MV
HAGOP BEDOYAN/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.

Chapter 11 debtor-in-possession Flavio Almeida Martins dba Top Line Dairy ("Debtor") moves to voluntarily dismiss this case under 11 U.S.C. § 1112(b). Doc. #266.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(4). The failure of the creditors, 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 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.

Debtor filed chapter 11 bankruptcy on June 1, 2022. Doc. #1. No trustee has been appointed in this case. Debtor owns and operates the following four dairies (the "Dairies"):

i. Top Line Dairy West located at 13891 Kent Avenue, Hanford, CA, consisting of 665.52 acres, and currently listed at $9.5 million.
ii. Top Line Dairy East located at 180705 13th Avenue, Hanford, CA, consisting of 601.9 acres, and currently listed at $7.5 million, but not currently operating.
iii. Vaca Linda Dairy located at 14235 Kent Avenue, Hanford, CA, consisting of 1300 acres, and currently listed at $12 million.
iv. Pedro Dairy located in Stratford, CA, consisting of 244 acres, and currently listed at $1.5 million, but not currently operating.

Doc. #268. Earlier in the case, Debtor concluded that it was in the best interests of the estate to sell the Dairies and listed the Dairies for sale with Schuil & Associates ("Broker"). *Id.* Purchase offers and counteroffers were exchanged between Debtor and prospective buyers, but to date, no written contracts for the sale of any of the Dairies has materialized despite Debtor's, Broker's, and Bank of the Sierra's ("BOTS") best efforts.

The primary obstacles facing Debtor in selling the Dairies or proposing a confirmable liquidating plan is the low values of the Dairies in comparison to the large debt secured by the Dairies that is in excess of the current, realistic values of the Dairies, as well as the inability to propose a plan that will satisfy the plan treatment of priority taxes as required under 11 U.S.C. § 1129(a)(9). *Id.*

Outside of proposing a plan that values the Dairies as part of the plan, the only way for Debtor to sell the Dairies would be to do so pursuant to 11 U.S.C. § 363(f), which would require consent of the lienholders of the Dairies. However, Debtor has been unsuccessful in obtaining the consent of all lienholders. *Id.*

Since liquidation of the Dairies will best occur outside of bankruptcy, Debtor stipulated to granting BOTS relief from the stay to proceed with its foreclosure sales against the Dairies and related personal property, and to have a receiver appointed to operate the Dairies until they are sold post-dismissal. *Id.*

Additionally, Debtor and BOTS have agreed that dismissal will be effective January 1, 2023, and all cash on hand will be turned over to the receiver after costs of administration invoices have been paid by Debtor, including payment of all outstanding unpaid professional and U.S. Trustee's fees. *Id.* Since Debtor is a "farmer" as defined in 11 U.S.C. § 101(20), Debtor does not consent to conversion of the case to chapter 7.

11 U.S.C. § 1112(b) allows the court to dismiss a chapter 11 case. Absent "unusual circumstances," § 1112(b)(1) provides that the court

shall convert or dismiss a case under this chapter for "cause," whichever is in the best interests of creditors and the estate, unless the court determines that appointment of a trustee or an examiner under § 1104(a) is in the best interests of creditors and the estate. Section 1112(b)(4) includes a non-exhaustive list of "causes." Cause exists where there is "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." § 1112(b)(4)(A). Cause exists where creditors will not benefit from administration. *In re Brogdon Inv. Co.*, 22 B.R. 546, 546 (Bankr. N.D. Ga. 1982) ("There is simply nothing to reorganize, no creditors to benefit from the administration of the estate in this court, and no reason to continue the reorganization."). Cause also exists if reorganization is no longer necessary, or a debtor's circumstances have materially changed since the filing of the case. *In re OptInRealBig.com, LLC*, 345 B.R. 277, 283-84 (Bankr. D. Colo. 2006).

The court should "consider other factors as they arise and use its equitable power to reach the appropriate result." *Pioneer Liquidating Corp. v. U.S. Trustee (In re Consol. Pioneer Mortg. Entities)*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) *aff'd*, 264 F.3d 803 (9th Cir. 2001). The court has broad discretion in determining cause. *Id.*

If there is "cause" to convert or dismiss, the court must then decide: (1) whether dismissal is in the best interests of creditors and the estate; and (2) identify whether there are unusual circumstances that establish dismissal or conversion is not in the best interests of creditors and the estate. *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 612 (B.A.P. 9th Cir. 2001).

Here, Debtor contends that the total debts secured by the Dairies is in excess of the current, realistic value of the Dairies. Doc. #266. Debtor is unable to obtain the consent of all lienholders with liens against the Dairies to allow for the sale of the Dairies free and clear of liens pursuant to § 363(f) outside of the context of plan confirmation.

Additionally, on June 15, 2022, the Internal Revenue Service ("IRS") filed a proof of claim in the amount of $2,627,891.23, of which $1,330,243.85 is secured and $1,297,647.38 is unsecured and entitled to priority. Claim 1. On June 24, 2022, the California Employment Development Department filed a proof of claim in the amount of $323,717.91, of which $226,717.39 is entitled to priority. Claim 4. To satisfy the requirements of plan confirmation, Debtor would have to repay the total value of the two priority portions of the tax claims with interest over a period of time not exceeding five years after the Debtor's order for relief. § 1129(a)(9)(C). Without the income generated by the Dairies, Debtor is not able to satisfy the plan confirmation requirements set forth in § 1129(a)(9)(C).

Therefore, cause exists to dismiss this case. Since Debtor is a farmer under § 101(20), the court need not determine whether dismissal or conversion is in the best interests of creditors or the estate. As to

appointment of a chapter 11 trustee or examiner, there do not appear to be any funds available to pay such trustee or examiner without the consent to use cash collateral of BOTS, Western Milling, and the IRS. Additionally, there is no indication that a chapter 11 trustee would not face the same impediments facing the Debtor if the trustee tried to liquidate the Dairies or propose a chapter 11 plan.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. The chapter 11 case will be dismissed without prejudice under 11 U.S.C. § 1112(b).

11:30 AM

1. 22-11127-B-7 **IN RE: SCOTT FINSTEIN**
22-1017 CAE-1

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-19-2022 [1]

NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURG V. FINSTEIN
KAREL ROCHA/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

The court is in receipt of defendant Scott Allen Finstein's answer, but it still fails to address certain allegations in the complaint. Doc. #23. This status conference will be called and proceed as scheduled.

2. 13-11337-B-13 **IN RE: GREGORY/KARAN CARVER**
22-1001 CAE-2

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE OWNERSHIP STATEMENT
11-17-2022 [88]

CARVER ET AL V. SETERUS INC. ET AL

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

Defendant Nationstar Mortgage, LLC filed a Corporate Ownership Statement on November 21, 2022 as required by Fed. R. Bankr. P. 7007.1 and the *Order to Show Cause* ("OSC"). Docs. #88; #94. Accordingly, the OSC will be VACATED.

3. 22-11540-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
22-1025 CAE-1

STATUS CONFERENCE RE: COMPLAINT
10-24-2022 [1]

VALLEY TRANSPORTATION, INC. V. MENDOZA
RILEY WALTER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

The court is in receipt of plaintiff Valley Transportation, Inc.'s status conference statement. Doc. #40. This status conference will be called and proceed as scheduled.

4. 22-11540-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
22-1025 WJH-1

CONTINUED MOTION FOR ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION
10-25-2022 [12]

VALLEY TRANSPORTATION, INC. V. MENDOZA
RILEY WALTER/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

This motion was originally scheduled and heard on October 27, 2022. Doc. #21. The court denied the request for a temporary restraining order but continued the motion for a preliminary injunction to December 20, 2022. Doc. #23.

Valley Transportation, Inc. ("Plaintiff") was permitted to augment the record no later than November 18, 2022. *Id.* Andrew Mendoza ("Defendant") was permitted to file and serve a response not later than December 2, 2022. *Id.* Any reply by Plaintiff had to be filed not later than December 13, 2022. *Id.*

On November 18, 2022, Plaintiff filed two supplemental declarations and an exhibit. Docs. ##26-28.

Defendant filed supplemental opposition on December 2, 2022. Doc. #31.

Plaintiff filed a reply brief on December 13, 2022.

This matter will be called and proceed as scheduled.

5. 18-11651-B-11 **IN RE: GREGORY TE VELDE**
19-1033 DLF-2

MOTION FOR ORDER ESTABLISHING GOOD FAITH SETTLEMENT
11-17-2022 [579]

SUGARMAN V. IRZ CONSULTING, LLC ET AL
MICHAEL DIAS/ATTY. FOR MV.

NO RULING.

Third-Party Defendant George Chadwick dba George Chadwick Consulting ("Chadwick") moves for an order (a) establishing that Chadwick settled the adversary proceeding in good faith with plaintiff chapter 11 trustee Randy Sugarman, (b) barring cross-complaints against Chadwick, and (c) dismissing the third-party complaint with prejudice as to Chadwick. Doc. #579; #585.

Third-Party Plaintiff IRZ Consulting, LLC opposed. Doc. #609.

Chadwick replied. Doc. #620.

This motion was filed on 28 days' notice pursuant to Local Rule of Practice 9014-1(f)(1) and will proceed as scheduled. Because this motion, if granted, will be dispositive as to Chadwick's involvement in this case, the court intends to take the matter under submission and subsequently issue a report and recommendation for *de novo* consideration by the District Court. The court will issue an order.

6. 20-13855-B-11 **IN RE: MOHOMMAD KHAN**
21-1026

MOTION TO SET ASIDE DISMISSAL OF CASE
9-26-2022 [31]

KHAN V. WILMINGTON TRUST N.A
MOHAMMAD KHAN/ATTY. FOR MV.
CLOSED: 12/06/2021; DEBTOR DISMISSED: 09/24/2021;

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The court will issue an order.

Pro se debtor Mohammad Khan, also known as Mohommad Khan in other pleadings ("Plaintiff"), moves to set aside the dismissal without leave to amend and with prejudice of his adversary proceeding against Wilmington Trust, N.A. ("Defendant").[4] Doc. #31.

Since Plaintiff is *pro se* and is not represented by counsel, this matter will be called as scheduled. The motion will be DENIED WITH PREJUDICE for failure to comply with the Local Rules of Practice ("LBR") and failure to make a *prima facie* showing that Plaintiff is entitled to the relief sought.

First, Defendant was not properly served. Doc. #31. Defendant is a bank insured by the Federal Deposit Insurance Corporation ("FDIC"), so it is an insured depository institution under 11 U.S.C. § 101(35)(A) and 12 U.S.C. § 1813(c)(2) (an "insured depository institution" is any bank insured by the FDIC).[5]

Service on insured depository institutions in adversary proceedings is governed by Fed. R. Bankr. P. ("Rule") 7004(h), which requires served to be made by certified mail and addressed to an officer, unless one of three exceptions specified in subsections (h)(1) to (h)(3) have been met. There is no indication that any of these exceptions apply.

Here, Plaintiff served proposed orders and motions to reopen case, waive fees, and set aside order on Defendant's attorney, Wright Finlay Zak, and the U.S. Trustee's ("UST") office. Doc. #31. However, the address for the UST's office is incorrect. As was the case at the September 22, 2021 hearing in which this case was dismissed, Plaintiff entirely failed to properly serve Defendant and the UST. Despite repeatedly notifying Plaintiff in this action and related proceedings, he has made no attempt to ever correct these deficiencies.

Second, Plaintiff failed to use a DCN. *Id.* LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Third, Plaintiff did not advise respondents whether and when opposition must be filed and served. Doc. #31. LBR 9014-1(d)(3)(B)(i) requires the notice of hearing to advise potential respondents whether and when written opposition must be filed and served. For motions filed on 28 days or more of notice, LBR 9014-1(f)(1)(B) requires the movant to notify respondents that any opposition to the motion must be in writing and filed with the court at least 14 days preceding the date of the hearing. Furthermore, LBR 9014-1(d)(3)(B)(i) also requires the notice to include the names and addresses of persons who must be served with any opposition.

Fourth, Plaintiff failed to include the required disclosures in the notice of hearing regarding the court's pre-hearing dispositions that are available on the court's website. Doc. #31. LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine: (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at http://www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the prehearing dispositions prior to the hearing.

Fifth, Plaintiff failed to provide any evidence with this motion, and failed to file all required documents separately. LBR 9014-1(d)(1) requires every motion or other request for an order to be comprised of a motion, notice, evidence, and a certificate of service. Each of these documents must be filed separately. LBR 9004-2(c)(1), (d). Here, Plaintiff filed a *Notice and Motion to Set Aside Order od Dismissal Pursuant Rule 60 B* [*sic*], which supposedly consists of a notice, motion, and proof of service. Doc. #31. No declarations, exhibits, or any other competent evidence was submitted in support of this motion. No *separate* certificates of service were filed with this motion. LBR 9014-1(e)(3) requires each proof of service to be filed separately, bear the Docket Control Number of the matter to which it relates, and identify the title of the pleadings and documents served.

Sixth, this motion is not timely. It was filed on September 26, 2022, which is one year and two days after the case was dismissed on September 24, 2021. Docs. #23; #31. Though Debtor fails to present any valid legal arguments, he appears to be attempting to seek relief from the court's order dismissing this adversary proceeding under Federal Rule of Civil Procedure ("Civ. Rule") 60(b).

Rule 9024 incorporates Civ. Rule 60(b) and permits the court to grant relief from a final judgment, order, or proceeding based on (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that could not have been discovered in time to move for a new trial under Civ. Rule 59(b); (3) fraud, misrepresentation, or misconduct; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or (6) any other reason that justifies relief. Civ. Rule 60(b). Such request must be made "within a reasonable time" generally, and within one year when requested under Civ. Rule 60(b)(1), (b)(2), or (b)(3). Civ. Rule 60(c). Here, the order dismissing this case was filed more than one year ago, so relief under subsections (b)(1) through (b)(3) are unavailable.

Plaintiff claims he is the victim of conspiracy, discrimination, fraud, and espionage, and requests the reopening of this case because of an alleged error by the court and new evidence. Doc. #31. Namely, Plaintiff contends that Defendant "forcibly and willfully violated the automatic stay" by foreclosing on Debtor's residence at 1810 Mora Ave., Calistoga, CA 94515 ("Property") on December 22, 2020. This

court erred, says Plaintiff, when we found that the automatic stay was not in effect on December 22, 2020 at the time Defendant foreclosed on Property. So, Plaintiff filed this motion under Civ. Rule 60(b) to set aside the dismissal.

This court did not err because Property was subject to an *in rem* relief from stay order at the time Defendant foreclosed on Property. Plaintiff's business partner, Bruce Chadbourne, filed at least six bankruptcy cases in the Northern District of California between 2015 and 2019. All six cases were dismissed pre-confirmation. In the sixth case, Case No. 19-10346, Defendant filed a motion for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1), (d)(2), and (d)(4). On July 8, 2019, the Honorable Dennis Montali issued an order denying as moot Defendant's motion under § 362(d)(1) and (d)(2) because the case had already been dismissed but granted the motion under § 362(d)(4). An order entered under § 362(d)(4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

Although Chadbourne appealed that order and the appeal is still pending, there is no indication that it was ever stayed pending the outcome of the appeal. "Unless stayed, a federal judgment retains all of its preclusion effects and may be enforced during the pendency of the appeal." *In re Sunergy Cal. LLC*, Nos. 21-20172-C-11, RG-20, 2022 Bankr. LEXIS 3270 at *6 (Nov. 18, 2022), citing *Tripati v. Henman*, 857 F.2d 1366, 1367 (9th Cir. 1988). Therefore, the automatic stay did not go into effect when Plaintiff filed this bankruptcy.

This matter will be called and proceed as scheduled because Defendant is *pro se*. This motion will be DENIED.

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[4] The court notes that Plaintiff was deemed to be a vexatious litigant in Napa County Superior Court, Case No. 19CV000046, on October 22, 2021. https://www.courts.ca.gov/documents/vexlit.pdf (visited December 13, 2022). The court may take judicial notice *sua sponte* of information published on government websites. Fed. R. Evid. 201(c)(1); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

[5] *See* FDIC Cert. #34069, *BankFind Suite*, https://banks.data.fdic.gov/bankfind-suite/bankfind (visited Dec. 13, 2022).