

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, January 6, 2022
Place: Department A - 510 19th Street
Bakersfield, California

**ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)**

Pursuant to District Court General Order 631, courthouses for the Eastern District of California were reopened to the public effective June 14, 2021.

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [19-14515](#)-A-13 **IN RE: SANOVIO GARCIA**
[RSW-5](#)

MOTION TO MODIFY PLAN
11-15-2021 [[86](#)]

SANOVIO GARCIA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

2. [18-12923](#)-A-13 **IN RE: JESUS/ROCHELLE PORTILLO**
[PK-5](#)

MOTION TO MODIFY PLAN
11-8-2021 [[87](#)]

ROCHELLE PORTILLO/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 3, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to modify the chapter 13 plan. Tr.'s

Am. Opp'n, Doc. #110. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than January 20, 2022. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Trustee shall file and serve a reply, if any, by January 27, 2022.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than January 27, 2022. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

3. [21-12240](#)-A-13 **IN RE: BONNIAFAY DESHAZO**
[MHM-2](#)

MOTION TO DISMISS CASE
11-17-2021 [[23](#)]

MICHAEL MEYER/MV
DISMISSED 12/9/21

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on December 9, 2021. Order, Doc. #32. The motion will be DENIED AS MOOT.

4. [21-12175](#)-A-13 **IN RE: SHANNON SIMPSON**
[MHM-2](#)

MOTION TO DISMISS CASE
11-17-2021 [[22](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 3, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to February 3, 2022, at 9:00 a.m., to be heard with the debtor's motion to confirm plan.

MOTION TO DISMISS CASE
11-17-2021 [[31](#)]

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case for: (1) unreasonable delay by the debtor that is prejudicial to creditors, pursuant to 11 U.S.C. § 1307(c)(1); (2) the debtor's failure to appear at the § 341 meeting of creditors; and (3) the debtor's failure to provide required documentation. Doc. #31. The debtor also did not submit copies of payment advices (e.g., paystubs) within 45 days after the petition date as required by 11 U.S.C. § 521(i)(1). Doc. #31. The debtor did not oppose Trustee's motion.

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 because the debtor did not appear at the § 341 meeting and has not responded to Trustee's requests for documentation. The debtor has failed to comply with the requirements of 11 U.S.C. § 521(a)(1)(B). Doc. #33.

Because § 521(i)(1) requires the automatic dismissal of a voluntary chapter 13 case where the debtor fails to file all of the information required by § 521(a)(1), the court finds that dismissal is appropriate in this case.

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

6. [21-12495](#)-A-13 **IN RE: JARED/CHRISTINA HARP**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
12-14-2021 [[20](#)]

D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtors filed a modified plan on December 30, 2021 (DMG-2, Doc. #30), with a motion to confirm the modified plan set for hearing on February 3, 2022 at 9:00 a.m. Doc. ##29-33.

7. [21-12496](#)-A-13 **IN RE: VANESSA GARCIA AMPARANO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
12-14-2021 [[16](#)]

D. GARDNER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to February 3, 2022 at 9:00 a.m.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. The court intends to continue the hearing on the objection. 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.

Vanessa Christine Garcia Amparano ("Debtor"), the chapter 13 debtor, filed the bankruptcy petition on October 26, 2021. Doc. #1. The Notice of Chapter 13 Bankruptcy Case Meeting of Creditors and Deadlines Due to COVID-19 Outbreak ("Notice") required objections to plan confirmation be set for hearing on January 6, 2022. Doc. #13. In compliance with the Notice, the chapter 13 trustee ("Trustee") filed an objection to plan confirmation. Doc. #16. Per the objection, Trustee states that the proposed plan is not ready for confirmation. Trustee contends that the meeting of creditors has not yet concluded, Debtor's schedules are incomplete or incorrect, Debtor's current monthly income and disposable income calculations must be updated, and Debtor's proposed chapter 13 plan does not fund in 60 months. Doc. #16.

The court is inclined to continue the hearing to February 3, 2022 to permit Trustee to conclude the meeting of creditors, currently continued to January 11, 2022, and permit Debtor to address Trustee's other objections to plan confirmation.

1. [18-11949](#)-A-7 **IN RE: MOGUL ENERGY PARTNERS I, LLC**
[JMV-2](#)

MOTION FOR ADMINISTRATIVE EXPENSES
12-9-2021 [[203](#)]

JEFFREY VETTER/MV
D. GARDNER/ATTY. FOR DBT.
LISA HOLDER/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.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Mogul Energy Partners I LLC ("Debtor"), moves the court for an order authorizing the payment of \$4,527.57 to the Franchise Tax Board as an administrative tax expense and for authorization to pay an additional amount up to \$1,000.00 for any unexpected tax liabilities without further court approval. Doc. #203.

11 U.S.C. § 503(b)(1)(B) states that, after notice and a hearing, administrative expenses shall be allowed for "any tax [] incurred by the estate, whether secured or unsecured, including property taxes . . . except a tax of a kind specified in section 507(a)(8) of this title[.]" "Pursuant to this subsection of § 503, a claim is entitled to allowance as an administrative expense if two requirements are satisfied: the tax must be incurred by the estate and the tax must not be a tax of a kind specified in § 507[(a)(8)]." Towers for Pacific-Atlantic Trading Co. v. United States (In re Pacific-Atlantic Trading Co.), 64 F.3d 1292, 1298 (9th Cir. 1995). Here, Trustee has shown that the tax was incurred by the estate, and the tax is not a tax of the kind specified in § 507(a)(8). Doc. #205.

Accordingly, this motion is GRANTED. Trustee is authorized to pay \$4,527.57 to the Franchise Tax Board as an administrative tax expense as well as an additional amount not to exceed \$1,000 for any unexpected tax liability incurred by the estate and not for a tax of a kind specified in § 507(a)(8).

MOTION TO APPROVE LOAN MODIFICATION
11-17-2021 [[14](#)]

CALIBER HOME LOANS, INC./MV
D. GARDNER/ATTY. FOR DBT.
JENNIFER WONG/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.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Creditor Caliber Home Loans Inc. ("Movant") seeks authorization from this court to enter into a loan modification with partial claims agreement and subordinate mortgage ("Agreement") with the debtor Francisco Ramirez ("Debtor") regarding Debtor's residential real property commonly referred to as 9111 Seahurst Ct., Bakersfield, CA 93312 (the "Property"). Doc. #14.

Movant holds a first position note ("Note") secured by a deed of trust in the Property. Schedule D, Doc. #1. Debtor is in default under the current loan terms and is unable to cure and maintain the required monthly payments required by the Note. Doc. #14. To resolve the delinquency, the Agreement will reduce the principal balance from \$216,997 to \$208,131.58. Doc. #14. A partial claim of \$29,037.01 will be held by the U.S. Department of Housing and Urban Development c/o Novad Management Consulting, which will bear no interest and will be subordinate to Movant's first priority deed of trust. Doc. #14. No other Note terms were changed as part of the Agreement. Doc. #14. The chapter 7 trustee filed a Report of No Distribution, and no objections were filed thereto. Doc. #18.

This motion is GRANTED. Debtor is authorized, but not required, to complete the Agreement with Movant. Debtor and Movant are authorized to enter into any agreement and execute any documents as may be necessary to carry out the Agreement in accordance with the motion.

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-17-2021 [[23](#)]

THE GOLDEN 1 CREDIT UNION/MV
SUSAN SALEHI/ATTY. FOR DBT.
KAREL ROCHA/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.

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

The movant, The Golden 1 Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2016 Chrysler 200 Sedan ("Vehicle"). Doc. ##18, 19, 23.

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor is three payments past due in the amount of \$1,630.04 plus attorney fees and costs of \$688.00. Doc. #21.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit 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. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least three pre- and post-petition payments and the Vehicle is a depreciating asset.