



UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
HONORABLE RENÉ LASTRETO II  
Department B – 510 19th Street  
Bakersfield, California

**Hearing Date: Wednesday, January 3, 2024**

*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 as instructed below.*

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) via **ZOOMGOV VIDEO**, (2) via **ZOOMGOV TELEPHONE**, and (3) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

Parties in interest and members of the public may connect to ZoomGov, free of charge, using the information provided:

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Please join at least 10 minutes before the start of your hearing. You are required to give the court 24 hours advance notice on [Court Calendar](#).

To appear remotely for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Procedures and Guidelines](#) for these and additional instructions.
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**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including "screenshots" or other audio or visual copying of a hearing, is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

9:00 AM

1. [23-12401](#)-B-13     **IN RE: DANIEL/ARACELY REYES**  
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY AMERICAN HONDA FINANCE  
CORPORATION  
12-5-2023     [\[21\]](#)

AMERICAN HONDA FINANCE  
CORPORATION/MV  
RABIN POURNAZARIAN/ATTY. FOR DBT.  
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION:     Overruled as moot.

ORDER:             The court will issue an order.

Creditor American Honda Finance Corporation through its agent Honda Financial Services ("Honda") objects to confirmation of the *Chapter 13 Plan* filed by Daniel and Aracely Reyes (collectively "Debtors") on October 27, 2023. Doc. #21.

On December 6, 2023, Debtors filed their *First Amended Plan*. Doc. #29. Accordingly, this *Objection* is OVERRULED as moot.

2. [23-12401](#)-B-13     **IN RE: DANIEL/ARACELY REYES**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
12-4-2023     [\[18\]](#)

RABIN POURNAZARIAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Overruled as moot.

ORDER:             The court will issue an order.

Trustee Michael H. Meyer objects to confirmation of the *Chapter 13 Plan* filed by Daniel and Aracely Reyes (collectively "Debtors") on October 27, 2023. Doc. #18.

On December 6, 2023, Debtors filed their *First Amended Plan*. Doc. #29. Accordingly, this *Objection* is OVERRULED as moot.

3. [23-11502](#)-B-13     **IN RE: ERIN STEVENSON**  
[MHM-3](#)

MOTION TO DISMISS CASE  
12-6-2023    [\[56\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will be called as scheduled.

DISPOSITION:                Granted or denied without prejudice.

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

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by Erin Stevenson ("Debtor") that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) Debtor's failure to make all plan payments under the plan. Doc. #56.

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

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 by the debtor that is prejudicial to creditors and failure to commence making plan payments.

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to the creditors (11 U.S.C. § 1307(c)(1)). The Debtor has failed to make all payments due under the plan. Doc. #58. Debtor is delinquent in the amount of \$2,335.00.

*Id.* Before this hearing, another payment in that same amount will also come due. *Id.*

Debtor timely responded, indicating that the November payment was received by the trustee via MoneyGram on December 7th. Doc. #61. As of the date of this opposition, the Debtor is current in his plan with another payment due on December 25th, 2023. Evidence indicates that Debtor was twelve (12) days late on the November payment due to a slight delay in receiving payment from the sale of business inventory.

The trustee has reviewed the schedules and determined that this case has a liquidation value of \$1,293.75 after trustee compensation if the case were converted to chapter 7. Doc. #58. This liquidation amount is comprised of the value of Debtor's business inventory. *Id.* The liquidation value of this case is de minimis. Therefore, dismissal, rather than conversion, serves the interests of creditors and the estate.

This matter will be called and proceed as scheduled to inquire whether Debtor is current on payments under the plan. If not, this motion may be GRANTED, and the case dismissed.

4. [23-12302](#)-B-13     **IN RE: CESAR PALACIOS**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-4-2023    [\[24\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION:     Granted as modified and case converted to Chapter 7.

ORDER:             The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted as modified 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 amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir.

1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by Cesar Palacios ("Debtor") that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The Debtor failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Trustee also avers the Debtor has failed to file all tax returns. Debtor did not oppose.

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).

In addition, the trustee has reviewed the schedules and determined that this case has a liquidation value of \$297,654.85 after trustee compensation if the case were converted to chapter 7. Doc. #26. While the See Doc. #Trustee's Declaration is unclear due to information omitted due to what is presumably a typographical error, Trustee asserts that there is a liquidation amount of \$297,654.85 remaining after Trustee compensation. See Doc. #26 at ¶11. The Trustee further avers, however, that even if the exemptions were amended, a substantial non-exempt equity that could be realized for the benefit of unsecured creditors would remain. Doc. #26. Therefore, conversion serves the interests of creditors and the estate.

Accordingly, the motion will be GRANTED AS MODIFIED, and the case CONVERTED TO CHAPTER 7.

5. [18-13708](#)-B-13     **IN RE: LEONARDO CHAVEZ**  
[MHM-3](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE  
3002.1  
11-30-2023     [[130](#)]

MICHAEL MEYER/MV  
NIMA VOKSHORI/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 13 trustee Michael H. Meyer ("Trustee") moves for an order determining: (1) Leonardo J. Chavez ("Debtor") has cured the default with respect to the Homeowner Association lien promissory note dated

November 17, 2006 in favor of Patriot Village Homeowners Association Inc. ("Creditor") and secured by real property located at 7401 Stone Breakers Avenue, Bakersfield, CA 93313 ("Property"); and (2) all post-petition payments due and owing as of October 2018 through September 2023 have been paid. Doc. #130.

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

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

No party in interest has responded, and the defaults of the above-mentioned parties in interest are entered.

Federal Rule of Bankruptcy Procedure ("Rule") 3002.1(f) requires the trustee, within 30 days after completion of payments under the plan, to file and serve on the claim holder, debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on a claim.

Rule 3002.1(g) provides that within 21 days after service of the notice under subdivision (f), the holder shall file and serve on the debtor, debtor's counsel, and the trustee, a statement indicating: (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim; and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b) (5)

Rule 3002.1(h) provides, on motion by the trustee filed within 21 days after service of the statement under subdivision (g), the court shall, after notice and a hearing, determine whether the debtor has cured the default and paid all required post-petition amounts. Trustee filed a *Notice of Final Cure Payment* pursuant to Rule 3002.1(f) on October 26, 2023. Doc. 124 Creditor did not provide Trustee with a Rule 3002.1(g) response. Since no response was filed, Trustee filed this motion. Doc. #130.

The record shows that Debtor has cured the default on the loan with Creditor and is current on mortgage payments through December 2021. The claim was originally filed by Creditor on January 7, 2019. POC #13.

Trustee began payments to Creditor beginning October 2018. Doc. #130. Trustee indicates that his office has paid a total of \$8,400.00 towards the ongoing payment, \$2,797.50 towards the pre-petition arrearage claim, and \$0.00 in late fees. *Id.*

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Pursuant to Rule 3002.1(i), Creditor and its successors in interest will be precluded from presenting any omitted information because it was required to be provided in the response to the *Notice of Final Cure* under Rule 3002.1(g). Debtors have cured the default and are current on mortgage payments through September 2023.

6. [23-12111](#)-B-13     **IN RE: MARY HELEN BARRO**  
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE  
MICHAEL H. MEYER  
11-1-2023    [\[14\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.  
DISMISSED 12/07/2023

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

DISPOSITION:     Denied as moot.

ORDER:             The court will enter the order.

On December 7, 2023, the court entered an order dismissing this case. Accordingly, the *Objection* is DENIED AS MOOT.



7. [22-10217](#)-B-13     **IN RE: ALFREDO HARO**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-5-2023    [\[33\]](#)

LAUREN FOLEY/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:        This matter will be called as scheduled.

DISPOSITION:             Granted or denied without prejudice.

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

The chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the Alfred Haro ("Debtor") that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and for failure to complete the terms of the confirmed plan (11 U.S.C. § 1307(c)(6)). Doc. #33.

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

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.

Here, the chapter 13 trustee asks the court to dismiss this case 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)(6) for failure to complete the terms of the confirmed plan. Doc. #33.

Debtor timely responded indicating that a health issue resulted in Debtor's inability to work for the last two months and fell behind

in plan payments. Debtor expects to return to work and continue with plan payments. Doc. #37. Debtor will be filing a modified plan that will suspend the three missed plan payments and increase Debtor's remaining plan payments by \$209.00 per month. This modified plan will keep Debtors' plan at 100% and remain feasible based on Debtor's income and expenses. Debtor's response was not supported by evidence.

In addition, the trustee has reviewed the schedules and determined that this case has a liquidation value of \$1,556.25 after trustee compensation if the case were converted to chapter 7. Doc. #35. This amount is comprised of the value of Debtor's 2003 Mercedes E500 and funds in checking and savings account. *Id.* The liquidation value of this case is de minimis. Therefore, dismissal, rather than conversion, serves the interests of creditors and the estate.

This matter will be called and proceed as scheduled to inquire whether Debtor is current on payments under the plan. If not, and since there is no contrary evidence, this motion may be GRANTED, and the case dismissed.

8. [22-11231](#)-B-13     **IN RE: CARLOS MORENO**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
11-3-2023    [\[38\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION:     Continued to February 7, 2024, at 9:00 a.m.

ORDER:             The court will issue an order.

The Trustee's *Motion to Dismiss* (Doc. #38) is hereby continued to February 7, 2024, to be heard in conjunction with the Debtor's *Motion to Modify Plan*. Doc. #42.

9. [22-11231](#)-B-13     **IN RE: CARLOS MORENO**  
[RSW-1](#)

MOTION TO MODIFY PLAN  
11-22-2023    [\[42\]](#)

CARLOS MORENO/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to February 7, 2024, at 9:00 a.m.

ORDER:             The court will issue an order.

Carlos Moreno ("Debtor") moves for an order confirming the *First Modified Chapter 13 Plan* dated November 22, 2023. Doc. #42.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation of the plan under 11 U.S.C. § 1322(a) and § 1325(a)(6) for the following reasons:

1. The plan payment is short \$7.16 per month effective December 2023. Also, the plan incorrectly states the amount which was to have been paid to creditor Right Start Mortgage/Carrington Mortgage Services LLC through November 2023 towards Class 1 arrears.
2. The last filed Schedules I/J show a net monthly income that is insufficient to cover the plan payment.

Doc. #52.

This motion to confirm the modified plan will be **CONTINUED to February 7, 2024, at 9:00 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's and Creditor's objections to confirmation are withdrawn, the Debtor shall file and serve a written response to the objections no later than **fourteen (14) days** before the continued hearing date. The response shall specifically address each issue raised in the objection(s) to confirmation, state whether each issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee shall file and serve a reply, if any, no later than **seven (7) days** prior to the hearing date.

If the Debtor elects 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 **seven (7) days** before the continued hearing date. If the Debtor does not timely file a modified plan or a written response, the objection will be sustained on the grounds stated, and the motion will be denied without further hearing.

10. [21-12632](#)-B-13     **IN RE: ANTONIO/MARY VIEYRA**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-5-2023    [\[26\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:        This matter will be called as scheduled.

DISPOSITION:             Granted or denied without prejudice.

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

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by Antonio and Mary Veyra ("Debtors") that is prejudicial to creditors and 11 U.S.C. § 1307(c)(6) Debtors' failure to complete the terms of the confirmed plan. Doc. #26.

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

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable the Debtors that is prejudicial to creditors and 11 U.S.C. § 1307(c)(6) Debtors' failure to complete the terms of the confirmed plan. Doc. #26.

Debtors timely responded, indicating that the October and November payments have been paid and the December payment to be paid soon. Doc. #30. Debtors' response was not supported by evidence.

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.

In addition, the trustee has reviewed the schedules and determined that this case has a liquidation value of \$1,087.50 after trustee compensation if the case were converted to chapter 7. Doc. #28. This amount is comprised of the value of Debtors' Carson Gardening Trailer. *Id.* The liquidation value of this case is de minimis. Therefore, dismissal, rather than conversion, serves the interests of creditors and the estate.

This matter will be called and proceed as scheduled to inquire whether Debtor is current on payments under the plan. If not, and since there is no contrary evidence, this motion may be GRANTED, and the case dismissed.

11. [23-12332](#)-B-13     **IN RE: MARIANNE HEPBURN**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
12-4-2023    [\[13\]](#)

RABIN POURNAZARIAN/ATTY. FOR DBT.

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

DISPOSITION:     Continued to February 7, 2024, at 9:00 a.m.

ORDER:             The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Marianne Hepburn ("Debtor") on October 19, 2023, under 11 U.S.C. § 1325(a)(1) and (a)(6) and under LBR 2016-1(c) on the following basis:

1. Debtor has not filed a business income and expense statement.
2. Plan payments are delinquent by \$1,028.00 through November 2023 plus any accumulating deficiency.
3. Section 3.06 of the plan does not comply with LBR 2016-1(c) and incorrectly states the dividend to be paid to Debtor's counsel.

Doc. #13.

The docket reflects that Debtor filed a business income and expense statement on December 8, 2023. Doc. #20. However, the other points raised by the Trustee have not been addressed.

This objection will be CONTINUED to February 7, 2024, at 9:00 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 to the objection not later than **14 days before the hearing**.

The response shall specifically address each issue raised in Trustee's 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 **7 days before the hearing**.

If the 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 **7 days before the hearing**. 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 further hearing.

12. [23-12332](#)-B-13     **IN RE: MARIANNE HEPBURN**  
[MHM-2](#)

MOTION TO DISMISS CASE  
12-6-2023    [\[16\]](#)

RABIN POURNAZARIAN/ATTY. FOR DBT.

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

DISPOSITION:     Continued to February 7, 2024, at 9:00 a.m.

ORDER:             The court will issue an order.

The trustee's motion to dismiss will be continued to February 7, 2024 at 9:00 a.m., to be heard in connection with the Chapter 13 Trustee's objection to plan confirmation. See Docs. ##16-18; MMH-2.

13. [21-11149](#)-B-13     **IN RE: DENNIS/LAUREN DEVERA**  
[RSW-4](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH A&C PROPERTIES  
12-14-2023    [\[55\]](#)

LAUREN DEVERA/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

Dennis and Laura Devera ("Debtors") filed this motion seeking to approve a settlement agreement in a class action lawsuit to which Debtors were members which was filed against Sempra/SCE ("the Defendant") for personal injuries arising from a 2015 gas leak. Doc. #55.

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.

In the absence of any response at the hearing, the court intends to GRANT this motion. However, the court notes that a copy of the settlement agreement has not been filed in this case. The motion will only be granted if Debtors separately file the settlement agreement and docket it as a stipulation.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Federal Rule of Bankruptcy Procedure ("FRBP") 9019(a). Absent from Rule 9019 is standing for the debtor to seek such approval. Typically, only the trustee may file a motion to approve a compromise or settlement.

Though 11 U.S.C. § 1303 does not expressly grant chapter 13 debtors standing to prosecute and settle claims, other courts have applied it to allow these claims to continue. The Second Circuit has stated, "we conclude that a Chapter 13 debtor, unlike a Chapter 7 debtor, has standing to litigate causes of action that are not part of a case under title 11." *Olick v. Parker & Parsley Petroleum Co.*, 145 F.3d 513, 515 (2d Cir. 1998)

The Second Circuit reasoned, "[t]he legislative history of § 1303, which sets out the exclusive rights of a Chapter 13 debtor, supports the holding that a Chapter 13 debtor's standing is different."

*Olick*, 145 F.3d 513 at 516. "Both the House of Representatives and Senate floor managers of the Uniform Law on Bankruptcies, Pub.L. No. 95-598 (1978), stated that:

Section 1303 . . . specifies rights and powers that the debtor has exclusive of the trustees. The section does not imply that the debtor does not also possess other powers concurrently with the trustee. For example, although Section [323] is not specified in section 1303, certainly it is intended that the debtor has the power to sue and be sued."

*Olick*, 145 F.3d 513 at 516 citing 124 Cong. Rec. H. 11,106 (daily ed. Sept. 28, 1978) (remarks of Rep. Edwards); S. 17,423 (daily ed. Oct. 5, 1978) (remarks of Sen. DeConcini).

Ninth Circuit courts have applied *Olick's* reasoning and agreed that chapter 13 debtors "have standing to pursue claims against others when those claims belong to the bankruptcy estate because 'the reality of a filing under Chapter 13 is that the debtors are the true representatives of the estate and should be given the broad latitude essential to control the progress of their case.'" *Donato v. Metro. Life Ins. Co.*, 230 B.R. 418, 425 (N.D. Cal. 1999) (quoting *Olick*, 145 F.3d 513 at 516). The court also favorably cited the Third Circuit's reasoning that a chapter 13 debtor could continue to prosecute prepetition claims after filing because "an essential feature of a Chapter 13 case is that the debtor retains possession of and may use all the property of his estate, including his prepetition causes of action . . ." *Donato*, 230 B.R. 418 at 425 (citing *Maritime Elec. Co., Inc. v. United Jersey Bank*, 959 F.2d 1194, 1209 at n.2 (3rd Cir. 1991)).

Therefore, the debtor has standing to prosecute and settle this claim.

According to the Declaration of Dennis Devera, this claim arose from a gas leak at Porter Ranch that occurred around October 2015, with Mr. Devera suffering exposure for 5-6 months. Doc. #57. All the residents of Porter Ranch suffered from exposure, with Mr. Devera suffering respiratory and digestive problems, nosebleeds, and headaches. *Id.* A class action suit against Sempra/SCE was filed and has since been resolved. *Id.* According to the moving papers, after payment of attorneys' fees and expenses, Debtors will receive \$38,565.87. *Id.*

It appears from the moving papers that Debtors and their counsel have considered the standards of *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1987) and *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.



Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the Debtors' business judgment. The order should be limited to the claims compromised as described in the motion.

Under the terms of the compromise:

1. Semptra/SCE will pay Dennis Devera a gross settlement of \$58,955.90;
2. From that, deductions will be made for court-ordered common benefit attorneys' fees (5%) and court-ordered common costs (2%), but that \$681.46 in BrownGreer QSF Earned Interest will be added, resulting in a final allocation amount of \$55,510.48;
3. From that, an additional \$14,738.97 in attorneys' fees, \$1,050.42 in costs, and \$155.22 in BrownGreer QSF Interest Earned on Attorneys' Fees will be subtracted, leaving a final payment to the Debtors in the amount of \$39,565.87.

As discussed above, on a motion by the debtor and after notice and a hearing, the court may approve a compromise or settlement. FRBP 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Properties*, 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:

- a. it appears unlikely that litigation with its attendant costs, time, and risk would produce better results than this settlement;
- b. collection will likely be easier through the settlement than through protracted litigation;
- c. from the record before the court, the level of complexity inherent in the litigation is unclear, but certainly the expense, inconvenience, and delay necessary in pursuing the litigation will be greater than will result from this settlement; and
- d. because the entirety of the settlement will be exempted according to Debtors' *Amended Schedule A/B and C* (Doc. #53), there will be no effect on the creditors.

Therefore, the court concludes the compromise to be 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.* Accordingly, in the absence of any opposition at the hearing and

conditional on the proper filing of the settlement agreement as a Stipulation, the motion will be granted.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

14. [20-12051](#)-B-13     **IN RE: BRIAN/LUANNA NELSON**  
[MHM-1](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE  
3002.1  
11-22-2023    [\[48\]](#)

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

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 13 trustee Michael H. Meyer ("Trustee") moves for an order determining: (1) Brian and Luanna Nelson ("Debtors") have cured the default with respect to the promissory note dated January 12, 2007, secured by a deed of trust on real property located at 12489 Umtali Road, Tehachapi, CA 93561 in favor of HVRML Trust 2019-1 c/o BSI Financial Services ("Creditor"); and (2) all post-petition payments due and owing as of July 2020 through August 2023 have been paid. Doc. #48.

On December 20, 2023, Creditor filed a Response stating that its failure to timely respond to the Notice of Final Cure Payment was due to inadvertence, that Debtors have cured the default at issue, and that all post-petition payments due and owing as of July 2020 through August 2023 have been paid.

Based on the foregoing averments by Creditor, this motion is GRANTED.

15. [23-10472](#)-B-13     **IN RE: CRYSTAL JOHNSON**  
[RSW-1](#)

MOTION TO MODIFY PLAN  
11-10-2023    [\[52\]](#)

CRYSTAL JOHNSON/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION:        Denied without prejudice

ORDER:                The court will enter the order.

Debtor Crystal Sheena Johnson ("Debtor") moves for confirmation of her *First Modified Chapter 13 Plan*. Doc. #52.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with Local Rules of Practice ("LBR") 9014-1.

LBR 9014-1(e) requires the movant to serve all pleadings and documents filed in support of a motion on or before the day they are filed with the court, with proof of such service in the form of a certificate of service to be filed with the Clerk concurrently with the pleadings or documents served, or not more than three days after they are filed. LBR 9014-1(e)(1), (e)(2). 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.

Here, no certificate of service was filed for this motion or any of the accompanying documents. Accordingly, the *Motion for Confirmation* is DENIED WITHOUT PREJUDICE.

16. [22-10895](#)-B-13     **IN RE: LISA YOUNG**  
[TCS-3](#)

MOTION FOR COMPENSATION FOR TIMOTHY C. SPRINGER, DEBTORS  
ATTORNEY(S)  
11-27-2023    [\[48\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION:        Granted.

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

The Law Offices of Timothy C. Springer and Timothy C. Springer, Esq. ("Applicant"), attorney for Lisa Young ("Debtor"), requests interim compensation in the sum of \$9,290.00 under 11 U.S.C. § 330 and 331.

Doc. #48. This amount consists of \$9,290.00 in fees and \$0.00 in expenses from May 5, 2022, through November 5, 2023. *Id.*

Debtor executed a statement of consent dated November 21, 2023 indicating that Debtor has read the fee application and approves the same. *Id.* § 9(7).

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.

Section 3.05 of the *Chapter 13 Plan* dated May 26, 2020, confirmed October 14, 2022, indicates that Applicant was paid \$212.00 prior to filing the case and, subject to court approval, additional fees of \$14,788.00 would be paid through the plan upon court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Docs. #5. This is Applicant's first fee application. Doc. #48.

Applicant's firm provided 25.6 billable hours at the following rates, totaling **\$9.290.00** in fees:

Professional	Rate	Billed	Total
Nancy Klepac	\$400.00	13.3	\$5,320.00
Timothy Springer	\$400.00	8.5	\$3,400.00
Virginia Ellis	\$150.00	3.8	\$570.00
<b>Total</b>		<b>25.6</b>	<b>\$9,290.00</b>

Docs. ##48, 50. Applicant does not request compensation for expenses.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" 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 here included, without limitation: (1) prepetition consultation and fact gathering, (2) preparation of the petition and filing documents, (3) independent verification of information, (4) plan, hearings, and objections, (5) 341 preparation and attendance, (6) claim administration and objections, (7) motions, and (8) fee applications. The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees. Doc. #48.

Accordingly, this motion will be GRANTED. Applicant shall be awarded \$9,290.00 in fees as reasonable compensation for services rendered on an interim basis under 11 U.S.C. § 330 and 331. The chapter 13 trustee will be authorized to pay Applicant \$9,290.00 through the confirmed plan for services and expenses from May 5, 2022, through November 5, 2023.

10:00 AM

1. [23-12204](#)-B-7     **IN RE: RAMON VAZQUEZ**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-14-2023    [\[13\]](#)

TD BANK, N.A./MV  
GREGORY SHANFELD/ATTY. FOR DBT.  
SHERYL ITH/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.

TD Bank, N.A., Successor in Interest to TD Auto Finance, LLC  
("Movant") seeks relief from the automatic stay under 11 U.S.C. §§  
362(d)(1) and (d)(2) with respect to a 2107 Nissan Pathfinder  
("Vehicle"). Doc. #13. Movant also requests waiver of the 14-day  
stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

Ramon Vasquez ("Debtor") did not oppose. No 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 U.S. Trustee, or any other party in  
interest to file written opposition at least 14 days prior to the  
hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of  
any opposition to the granting of the motion. *Cf. Ghazali v. Moran*,  
46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not  
materially alter the relief requested by the moving party, an actual  
hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d  
592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned  
parties in interest are entered and the matter will be resolved  
without oral argument. Upon default, factual allegations will be  
taken as true (except those relating to amount of damages).  
*Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir.  
1987). Constitutional due process requires that a plaintiff make a  
*prima facie* showing that they are entitled to the relief sought,  
which the movant has done here.

11 U.S.C. § 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 failed to make at least two complete pre-petition payments. The Movant has produced evidence that debtor is delinquent at least \$841.46. Docs. ##15, 16.

The court also finds that the Debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtor is in chapter 7. *Id.* The Vehicle is valued at \$12,150.00 and Debtor owes \$15,052.12. Doc. #18.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

2. [23-11124](#)-B-7     **IN RE: JUAN FLORES RUIZ AND RUTH FLORES**  
[UST-3](#)

MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)  
11-30-2023    [\[39\]](#)

TRACY DAVIS/MV  
VINCENT QUIGG/ATTY. FOR DBT.  
DEANNA HAZELTON/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.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"), moves for an order dismissing the above-styled Chapter 7 case without entry of discharge. Docs. #39.

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

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

Juan Luis Flores Ruiz and Ruth Flores ("Mr. Flores," "Mrs. Flores," or collectively "Debtors") filed the instant chapter 7 bankruptcy case on May 26, 2023. Doc. #1. With their petition, Debtors filed a Schedule I listing \$4,000.00 in monthly income. Doc. #1 (*Sched. I, Line 8a*). Schedule I indicates that Mr. Flores is employed by Flores Transport as a truck driver but that he receives no employment income and instead receives income from operating a business. *Id.* However, the bankruptcy filings do not include a "statement for each property or business showing gross receipts, ordinary and necessary business expenses, and the total monthly income" for any such business. Doc. #41. The Debtors' Schedules further assert that they have three children, monthly expenses of \$3,989.00, and a monthly net income of \$11.00. Doc. #1 (*Sched. J*). The Debtors' unsecured claims total \$67,371.00, of which \$0.00 is entitled to priority. Doc. #1 (*Sched. E/F*).

On November 30, 2023, the UST timely filed this *Motion to Dismiss* pursuant to 11 U.S.C. § 707(b)(1) and (3), arguing that this case is abusive under the "totality of the circumstances" under § 707(b)(3)(B). Doc. #41. The UST argues that dismissal is proper because, according to the UST's review of Debtors' bank accounts and expense reports, tax returns, and other documents, the Debtors' monthly net income appears to be \$12,971.00, a figure much higher than the \$4,000.00 listed in the schedules. Docs. ##42, 43. Based on these calculations, the UST asserts that the Debtors have sufficient monthly disposable income to pay 100% of their unsecured debts in less than 60 months. Doc. #41. Accordingly, dismissal of this chapter 7 case is warranted. *Id.*

A chapter 7 case may be dismissed only after notice and a hearing and only for "cause." 11 U.S.C. § 707(a) provides three statutorily enumerated grounds establishing cause, but these are not exclusive. *Sherman v. SEC (In re Sherman)*, 491 F.3d 948, 970 (9th Cir. 2007); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008). Under 11 U.S.C. § 707(b), an individual chapter 7 consumer debtor's case may be dismissed for presumed abuse or where abuse is demonstrated by bad faith or the totality of the circumstances of the debtor's financial condition. See 11 U.S.C. § 707(b)(1)-(b)(3).

Neither the Debtors nor any other party has responded to the motion, and the defaults of those parties in interest are entered. In the absence of any evidence that contradicts the UST's analysis of the Debtors' monthly income, the court finds that the existence of sufficient income to repay a meaningful portion of the Debtors' general unsecured debt within 60 months demonstrates under the totality of the circumstances that this case represents an abuse of the provisions of Title 11.



As there does not appear to be any benefit to creditors in keeping this case open, the motion will be GRANTED.

3. [20-12551](#)-B-7     **IN RE: MIGUEL/ADRIANA ARTEAGA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
11-28-2023    [\[34\]](#)

PHILLIP GILLET/ATTY. FOR DBT.  
12/1/23 \$11.50 COPYWORK PAID - \$2.00 STILL DUE

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                The minutes of the hearing will be the court's findings and conclusions.

ORDER:                        The court will issue an order.

Debtors' Attorney Phillip W. Gillet, Jr. ("Attorney") filed a *Certification Request* on November 14, 2023. A fee of \$13.50 is required at the time of filing that motion. A *Notice of Payment Due* was served on Attorney on November 22, 2023. Doc. #33.

On November 28, 2023, the Clerk of the court issued an *Order to Show Cause re Dismissal of Contested Matter or Imposition of Sanctions* directing Attorney to appear at the hearing and show cause why the motion should not be stricken, sanctions imposed on the party filer and/or their counsel, or other relief ordered for failure to comply with the provisions of 28 U.S.C. § 1930(b). Doc. #34.

On December 1, 2023, Attorney made a payment of \$11.50 leaving an amount due of \$2.00.

This matter will proceed as scheduled. If the remaining filing fee of \$2.00 is not paid prior to the hearing sanctions will be imposed on the filer on the grounds stated in the OSC.

4. [23-11651](#)-B-7      **IN RE: JASVIR SINGH AND JASWINDER KAUR**  
[RSW-1](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS NATIONAL BANK  
11-13-2023    [\[15\]](#)

JASWINDER KAUR/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.

Jasvir and Jaswinder Singh ("Debtors") move for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of American Express National Bank, f/k/a American Express Centurian Bank ("Creditor") in the sum of \$6,497.54 and encumbering residential real property located at 6200 Trinidad Court, Bakersfield, California ("Property"). Doc. #15.

Debtors complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process via first class mail on June 15, 2023. Doc. #19. No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 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 against Debtors in favor of Creditor in the amount of \$6,497.54 on March 16, 2021. Doc. #18. The abstract of judgment was issued on December 14, 2021, and was recorded in Kern County on December 16, 2021. *Id.* That lien attached to Debtor's interest in Property. Docs. ##17,18. Debtor estimates that the current amount owed on account of this lien is \$6,497.54. *Id.*; Doc. #1 (*Sched. D*)

As of the petition date, Property had an approximate value of \$409,400.00. Doc. #1 (*Sched. A/B*). Debtors claimed a \$339,203.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. Doc.#1 (*Sched. C*).

Property is encumbered by a first deed of trust in favor of Bank of America ("BOA") in the amount of \$203,197.00. Doc. #1 (*Sched. D*). Property is also encumbered by a second judgment lien in favor of BMO Harris Bank ("BMO") in the amount of \$69,017.38. *Id.* No information about the recordation of this lien was included in the moving papers, and there does not appear to be a separate motion to avoid this lien. But for the reasons outlined below, such information is not necessary for this disposition of the instant motion because there is no equity to which any lien can attach.

Creditor	Amount	Recorded	Status
1. BOA	\$203,197.00		Unavoidable
2. Creditor	\$6,497.54	12/16/21	Avoidable
3. BMO	\$69,017.38	Unknown	Unknown

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B). However, where there is no equity, this is not a consideration.

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

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

Amount of judgment lien		\$6,497.54
Total amount of unavoidable liens	+	\$203,197.00
Debtor's claimed exemption in Property	+	339,203.00
<i>Sum</i>	=	\$548,897.54
Debtor's claimed value of interest absent liens	-	\$409,400.00
Extent lien impairs exemption	=	\$139,497.54

*All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); accord. *Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); cf. *Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third parties, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property		\$409,400.00
Total amount of unavoidable liens	-	\$203,197.00
Homestead exemption	-	\$339,203.00
Remaining equity for judicial liens	=	(\$133,000.00)
Creditor's judicial lien	-	\$6,497.54
Extent Debtor's exemption impaired	=	(\$139,497.54)

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall state that Creditor's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.

10:30 AM

1. [23-11332](#)-B-11     **IN RE: TWILIGHT HAVEN, A CALIFORNIA**  
NON-PROFIT CORPORATION  
[WJH-30](#)

MOTION TO BORROW AND/OR MOTION FOR ADEQUATE PROTECTION  
12-27-2023    [[405](#)]

TWILIGHT HAVEN, A CALIFORNIA  
NON-PROFIT CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.  
OST 12/27/23

NO RULING.

11:00 AM

1. [23-11445](#)-B-7     **IN RE: SADEGH SALMASSI**  
[23-1044](#)     [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
10-17-2023    [[1](#)]

BLUE CROSS OF CALIFORNIA ET AL  
V. SALMASSI  
CHRISTOPHER RIVAS/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

11:30 AM

1. [23-11819](#)-B-7      **IN RE: BLANCA BADILLO**

PRO SE REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION

11-30-2023    [[14](#)]

RHONDA WALKER/ATTY. FOR DBT.

NO RULING.

2. [23-12063](#)-B-7      **IN RE: HENRY SUMLIN**

REAFFIRMATION AGREEMENT WITH WESTLAKE SERVICES, LLC

11-29-2023    [[15](#)]

R. BELL/ATTY. FOR DBT.

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

DISPOSITION:      Rescinded; taken off calendar.

NO ORDER REQUIRED.

Henry Sumlin ("Debtor") has rescinded this reaffirmation agreement with Westlake Services, LLC on December 22, 2023. Doc. #18. Accordingly, this matter will be taken off calendar.

3. [23-11872](#)-B-7      **IN RE: KENNEDY ARRUEJO**

REAFFIRMATION AGREEMENT WITH WELLS FARGO BANK, N.A.

11-16-2023    [[13](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

4. [23-11576](#)-B-7      **IN RE: EDUARDO MUNOZ GUEVARA AND ROSA MENDOZA CABEZAS**

REAFFIRMATION AGREEMENT WITH ASCENTIVM CAPITAL

11-7-2023    [[23](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.