



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, January 4, 2024
Department A – 510 19th Street
Bakersfield, California**

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 Niemann are simultaneously: (1) via **ZOOMGOV VIDEO**, (2) via **ZOOMGOV TELEPHONE**, and (3) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

To appear via zoom gov video or zoom gov telephone 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 Policies and Procedures](#) for these and additional instructions.
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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.

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

9:00 AM

1. [23-12205](#)-A-13 **IN RE: ALBA GONZALEZ**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
11-15-2023 [\[15\]](#)

JONATHAN VAKNIN/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Trustee withdrew the objection to confirmation on December 19, 2023. Doc. #25.

2. [23-12406](#)-A-13 **IN RE: ROBERT SMITH**
[MHM-1](#)

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

D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

3. [23-12406](#)-A-13 **IN RE: ROBERT SMITH**
[MHM-2](#)

MOTION TO DISMISS CASE
12-4-2023 [\[16\]](#)

D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings
and conclusions. The court will issue an order after 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 debtor timely filed written opposition on December 20, 2023. Doc. #23. This matter will proceed as scheduled.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is

prejudicial to creditors. Doc. #16. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to provide complete copies of all pay advices for the debtor's non-filing spouse for the 60 days prior to the bankruptcy filing as well as to file tax returns for the 2020 tax year under 11 U.S.C. § 1308. Id.

On December 20, 2023, the debtor responded to Trustee's motion. Doc. #23. The debtor did not address the motion to dismiss for the debtor's failure to provide Trustee with complete copies of all pay advices for the debtor's non-filing spouse. Id. With respect to the 2020 tax returns, the opposition asserts, without a supporting declaration, that the debtor's spouse handles the couple's tax return filings, the debtor believed that the tax return had been filed when it had not, and the debtor is working on getting the tax return filed as fast as possible. Id.

The debtor has failed to provide his filed 2020 state and federal tax returns as required by 11 U.S.C. § 1308. "Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate." 11 U.S.C. § 1307(e). "Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition." 11 U.S.C. § 1308(a).

Under 11 U.S.C. § 1308(b), "if the tax returns required by subsection (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond" 120 days after the date of the meeting for any return that is past due as of the date of the filing of the petition. 11 U.S.C. § 1308(b). Here, the additional time permitted under 11 U.S.C. § 1308(b) does not apply because, according to the court's docket, the first 341(a) meeting of creditors was held on November 28, 2023 and concluded.

The debtor concedes in his opposition that the debtor has no defense to dismissal under 11 U.S.C. § 1308 if Trustee seeks to enforce that penalty and the court's hands are tied. Doc. #23. By this motion, Trustee seeks enforcement of the 11 U.S.C. § 1308 penalty. The debtor has offered no legal authority, and the court knows of no such authority, under which the court can deny Trustee's motion to dismiss where, as here, the debtor has not filed the required tax returns and the section 341(a) meeting of creditors has been concluded.

Under 11 U.S.C. § 1307(e), the court shall dismiss or convert a case, whichever is in the best interests of creditors and the estate, for the failure of a debtor to file a tax return under section 1308. A review of the debtor's Schedules A/B, C and D shows that the debtor's significant asset, real property, is encumbered and fully exempt to the extent not encumbered. Doc. #1. The debtor claims exemptions in all the remaining assets. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

Accordingly, the motion will be GRANTED, and the case dismissed.

4. [18-13809](#)-A-13 **IN RE: MARY GUTIERREZ**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
9-22-2023 [[47](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Trustee withdrew the motion on December 28, 2023. Doc. #72.

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

MOTION TO DISMISS CASE
12-5-2023 [[150](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Trustee withdrew the motion on December 28, 2023. Doc. #158.

6. [23-11523](#)-A-13 **IN RE: JOSE TIRADO PEREZ**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
10-20-2023 [[82](#)]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part; the case will be converted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Although the pro se debtor did not file timely written opposition, the debtor did file an Official Form 122C-2, an amended chapter 13 plan and copies of his 2022

state and federal tax returns that address some of the deficiencies that provide the grounds for the motion to dismiss. Doc. ##114-116. On December 11, 2023, the debtor filed a statement opposing conversion of his bankruptcy case to chapter 7. Doc. #137. 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). Therefore, the defaults of all non-responding parties in interest, other than the debtor, are entered. This matter will proceed as scheduled.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the chapter 13 debtor Jose Tirado Perez ("Debtor") that is prejudicial to creditors. Doc. #82. Specifically, Trustee asks the court to dismiss this case for Debtor's failure to: (1) file the correct form for the chapter 13 plan required by the local rules; (2) set a plan for hearing on notice to creditors; (3) file an Official Form 122C-2; (4) comply with the pre-petition credit counseling requirement imposed by 11 U.S.C. § 109(h)(1); and (5) make all plan payments due under the plan. Id. As of October 20, 2023, plan payments are delinquent in the amount of \$350.00, with an additional plan payment of \$350.00 due on November 25, 2023. Id. Further, Debtor has failed to file his tax returns for the 2022 tax year, and that failure is an additional ground for dismissal under 11 U.S.C. § 1307(e). Id.

While Debtor did not file written opposition, on November 27, 2023, Debtor did file an Official Form 122C-2 and an amended chapter 13 plan on the correct form required by this court's local rules. Doc. #114-115. These documents satisfy the first and third grounds for Trustee's motion to dismiss. However, Debtor has not yet filed a motion to confirm his amended plan nor set that motion for hearing, so the second ground for dismissal remains outstanding.

Turning to the fourth ground for dismissal, under 11 U.S.C. § 109(h), an individual may not be a debtor unless the debtor received credit counseling within the 180-day period ending on the petition date. 11 U.S.C. § 109(h)(1). Debtor filed for relief under chapter 13 of the Bankruptcy Code on July 14, 2023. Doc. #1. Debtor completed credit counseling on August 16, 2023, and filed a certificate showing such on August 30, 2023. Doc. #45.

The Bankruptcy Code allows a debtor to request a waiver of the § 109(h)(1) requirement to receive credit counseling pre-petition based on exigent circumstances. 11 U.S.C. § 109(h)(3)(A). As previously determined by the court in connection with a motion filed by Debtor to vacate a prior dismissal of this bankruptcy case, on October 4, 2023, Debtor filed a request to permit Debtor to waive the requirement for pre-petition credit counseling. Doc. #64. By the credit counseling certificate filed on August 30, 2023, Debtor received credit counseling within the 45-day post-petition period permitted by the Bankruptcy Code, and the court waived that requirement based on the facts before this court. Court Audio, Doc. #73.

Turning to the additional ground for dismissal, under 11 U.S.C. § 1308, "[u]pon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate." 11 U.S.C. § 1307(e). "Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax

authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition." 11 U.S.C. § 1308(a).

Here, it does not appear that dismissal is appropriate under 11 U.S.C. § 1308 because, based on the proofs of claim filed by the Internal Revenue Service and the California Franchise Tax Board as well as the tax forms filed by Debtor in response to this motion, it appears that Debtor filed his tax returns for the 2022 tax year prior to filing this chapter 13 bankruptcy case. Doc. #116; Claims 2-2 & 11-2.

However, 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). Here, there is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because Debtor has failed to set a hearing to confirm his chapter 13 plan and Debtor is delinquent in his plan payments. Debtor's chapter 13 bankruptcy case was filed on July 14, 2023, and Debtor has yet to confirm a chapter 13 plan, and there is no hearing set or motion filed to confirm Debtor's chapter 13 plan filed on November 27, 2023. Doc. #115.

After the last hearing on this motion held on December 7, 2023, Debtor filed written opposition to conversion of this bankruptcy case to chapter 7 as well as an amended Schedule C. Doc. #136-137. While Debtor opposes conversion of his bankruptcy case to chapter 7, a review of Debtor's most recent Schedules A/B, C and D shows that while Debtor's real property is encumbered and fully exempt, Debtor has significant equity in a Toyota Camry that can be liquidated for the benefit of creditors. Because there appears to be non-exempt equity in Debtor's assets to be realized for the benefit of the estate, conversion, rather than dismissal, is in the best interests of creditors and the estate. Debtor's opposition to conversion is overruled.

Accordingly, the motion will be GRANTED IN PART, and the case will be converted.

7. [23-11523](#)-A-13 **IN RE: JOSE TIRADO PEREZ**
[MHM-5](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-4-2023 [\[117\]](#)

MICHAEL MEYER/MV

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 debtor filed an amended Schedule C on December 11, 2023, amending the claimed exemptions that are the subject of this objection. Doc. #136.

8. [23-11229](#)-A-13 **IN RE: DUNCAN NORWOOD**
[MHM-3](#)

MOTION TO DISMISS CASE
12-7-2023 [[79](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

9. [23-12338](#)-A-13 **IN RE: SALINA THOMAS**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
12-4-2023 [[16](#)]

DAVID CHUNG/ATTY. FOR DBT.

NO RULING.

10. [23-12338](#)-A-13 **IN RE: SALINA THOMAS**
[MHM-2](#)

MOTION TO DISMISS CASE
12-4-2023 [[19](#)]

DAVID CHUNG/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Trustee withdrew the motion on January 3, 2024. Doc. #30.

11. [23-10445](#)-A-13 **IN RE: ROGELIO/MYRA RIOS**
[RSW-2](#)

CONTINUED MOTION TO MODIFY PLAN
10-17-2023 [[40](#)]

MYRA RIOS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

12. [23-12466](#)-A-13 **IN RE: MARIO HUNTER**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
12-8-2023 [\[15\]](#)

ERIKA LUNA/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain 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 if a further hearing is necessary.

Mario Ullysses Hunter ("Debtor") filed his chapter 13 plan (the "Plan") on November 1, 2023. Doc. #8. Michael Meyer, chapter 13 trustee ("Trustee"), objects to confirmation of the Plan on the grounds that: (1) the Plan provides for payments to creditors for a period longer than 5 years in violation of 11 U.S.C. § 1322(d); (2) the debtor has not filed all applicable tax returns required by 11 U.S.C. § 1325(a)(9); and (3) the Plan provides for the payment of attorneys' fees in excess of the fixed compensation allowed in LBR 2016-1(c). Doc. #15.

Section 1322(d) of the Bankruptcy Code requires that a plan cannot provide for payments to creditors for longer than 5 years. The Plan currently provides for plan payments of \$1,875.00 and provides for 100% to general unsecured creditors totaling \$15,550.00. Plan, Doc. #8. However, Trustee contends the Plan would take 66.53 months to fund because total unsecured claims currently equal \$22,653.23. Doc. #15. Thus, the Plan does not fund in 5 years and cannot be confirmed.

Section 1325(a)(9) of the Bankruptcy Code requires that Debtor has filed all applicable federal, state and local tax returns as required by 11 U.S.C. § 1308. Debtor has not filed his 2020 and 2021 tax returns before the meeting of creditors was concluded. Claim 1-1; Mot., Doc. #15. Thus, the Plan cannot be confirmed.

LBR 2016-1(c)(4)(B) provides that after confirmation of Debtor's Plan, Trustee shall pay Debtor's counsel a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received in equal monthly installments over the term of the confirmed Plan. Here, the proposed Plan provides for attorney's fees totaling \$6,000 of which \$3,850.00 is to be paid through the plan. The Plan proposes to pay a monthly dividend of \$100.00 to Debtor's counsel, and that amount exceeds the monthly installment amount permitted by LBR 2016-1(c)(4)(B). The attorney fee dividend needs to be reduced to \$64.17 per month to comply with LBR 2016-1(c). Further, an amended Disclosure of Compensation form needs to be filed to coincide with the correct attorney fees

to be listed in the Plan and to omit section 6 regarding limitations on representation of Debtor. Doc. #1.

Additionally, LBR 2016-1(c)(3) states that attorneys who claim fees under LBR 2016-1(c) shall not seek, nor accept, a retainer greater than the sum of 25% of the fee specified in LBR 2016-1(c)(1) plus the amount of costs in LBR 2016-1(c)(2). Here, Debtor and Debtor's attorney have agreed to a retainer of \$6,000 of which \$2,150 has already been paid to Debtor's attorney. Doc. #1. Applying the formula set forth in LBR 2016-1(c)(3), 25% of attorney's fees in the amount of \$6,000 plus \$500 in expenses yields a maximum retainer of \$2,000 that Debtor's attorney was allowed to accept. However, Debtor's attorney accepted a retainer that exceeds the permitted maximum retainer by \$150.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

13. [23-10168](#)-A-13 **IN RE: ROBERT IRVIN**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
8-10-2023 [[94](#)]

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

NO RULING.

14. [23-10168](#)-A-13 **IN RE: ROBERT IRVIN**
[MHM-4](#)

MOTION TO DISMISS CASE
11-22-2023 [[143](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

15. [23-10168](#)-A-13 **IN RE: ROBERT IRVIN**
[RSW-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILLIAMS & WILLIAMS, INC.
FOR ROBERT S. WILLIAMS, DEBTORS ATTORNEY(S)
11-30-2023 [[147](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

16. [23-10168](#)-A-13 **IN RE: ROBERT IRVIN**
[RSW-3](#)

MOTION TO CONFIRM PLAN
11-30-2023 [[150](#)]

ROBERT IRVIN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

10:00 AM

1. [23-12306](#)-A-7 **IN RE: THOMAS/SAMMIE-LEE LEWIS**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-15-2023 [\[13\]](#)

PLANET HOME LENDING, LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The certificate of service filed in connection with this motion shows that the chapter 7 trustee was only served electronically pursuant to Federal Rule of Civil Procedure 5 and Federal Rules of Bankruptcy Procedure ("Rule") 7005 and 9036 Service. Doc. #18. However, Rules 4001(a)(1) and 9014(b) require service of a motion for relief from stay to be made pursuant to Rule 7004. Rule 9036(e) does not permit electronic service when any paper is required to be served in accordance with Rule 7004.

Because the chapter 7 trustee was not served by mail as required by Rule 7004(b)(1), the motion was not served properly on the chapter 7 trustee.

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

2. [23-12135](#)-A-7 **IN RE: MELODY TORRES**
[SKI-1](#)

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

MECHANICS BANK/MV
ROBERT WILLIAMS/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.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to 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.

The movant, Mechanics Bank, A California Banking Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2017 Honda Civic SI, VIN: 2HGFC3A52HH750652 ("Vehicle"). Doc. #14.

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 has failed to make at least one complete post-petition payment and another payment in the amount of \$355.96 will come due on November 17, 2023. Movant has produced evidence that the debtor is delinquent by at least \$355.96. Doc. #14.

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.

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 one post-petition payment to Movant and the Vehicle is a depreciating asset.

3. [23-12237](#)-A-7 **IN RE: MICHAEL OLEA AND BEATRIX HARVEY-OLEA**

AMENDED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-14-2023 [\[36\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee for the motion for relief from the automatic stay has been paid.

4. [23-12256](#)-A-7 **IN RE: ROSARIO GUTIERREZ PRECIADO AND JORGE CARDENAS**

NOTICE OF HEARING AND OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
11-18-2023 [\[13\]](#)

BRYAN SAHAGUN/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtors shall attend the meeting of creditors rescheduled for
January 5, 2024 at 11:00 a.m. If the debtors fail to do so, the chapter 7
trustee may file a declaration with a proposed order and the case may be
dismissed without a further hearing.

The time prescribed in Federal Rules of Bankruptcy Procedure 1017(e)(1) and
4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the
debtors' discharge or file motions for abuse, other than presumed abuse, under
11 U.S.C. § 707, is extended to 60 days after the conclusion of the meeting of
creditors.

5. [23-12697](#)-A-7 **IN RE: SANDEEP SANDHU**
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-14-2023 [\[10\]](#)

CROSSROADS EQUIPMENT LEASE AND FINANCE, LLC/MV
PETER BUNTING/ATTY. FOR DBT.
RAFFI KHATCHADOURIAN/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 prior to the
hearing date pursuant to 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.

The movant, Crossroads Equipment Lease and Finance, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2019 Freightliner Cascadia PT126SLP Tractor Truck, VIN: 3AKJHHDR1KSKB1299 (the "Vehicle"). Doc. #10. The debtor does not oppose the motion. Doc. #17.

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).

Based on the evidence filed with the motion, neither the debtor nor the bankruptcy estate hold title to the Vehicle or have any interest in the Vehicle. Doc. #10; Decl. of Rebecca Elli, Doc. #12. Thus, it appears that the automatic stay does not apply to the Vehicle. To the extent that the automatic stay does apply to the Vehicle, the court finds that "cause" exists to lift the stay because neither the debtor nor the estate hold title to the Vehicle or have any interest in the Vehicle.

Accordingly, to the extent that the automatic stay applies to the Vehicle, 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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because neither the debtor nor the estate hold title to the Vehicle or have any interest in the Vehicle and the Vehicle is a depreciating asset.

10:30 AM

1. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
10-5-2021 [[1](#)]

IGNACIO LAZO/ATTY. FOR DBT.

NO RULING.

11:00 AM

1. [12-11245](#)-A-7 **IN RE: MICHAEL/DEBORAH PETRINI**
[23-1046](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
11-2-2023 [[1](#)]

PETRINI ET AL V. MB DUNCAN, INC.
D. GARDNER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [12-11245](#)-A-7 **IN RE: MICHAEL/DEBORAH PETRINI**
[23-1046](#) [CAE-2](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE DISCLOSURE STATEMENT
12-1-2023 [[9](#)]

PETRINI ET AL V. MB DUNCAN, INC.

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the missing corporate disclosure statement was filed on December 8, 2023. Doc. #12. Therefore, this order to show cause will be VACATED.

3. [11-18268](#)-A-7 **IN RE: GREGORY/ELIZABETH PETRINI**
[23-1045](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
11-2-2023 [[1](#)]

PETRINI ET AL V. MB DUNCAN, INC.
D. GARDNER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

4. [11-18268](#)-A-7 **IN RE: GREGORY/ELIZABETH PETRINI**
[23-1045](#) [CAE-2](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE DISCLOSURE STATEMENT
12-1-2023 [\[12\]](#)

PETRINI ET AL V. MB DUNCAN, INC.

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the missing corporate disclosure statement was filed on December 8, 2023. Doc. #14. Therefore, this order to show cause will be VACATED.