



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Wednesday, January 4, 2023
Department B - 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 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.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

1. [19-13907](#)-B-13 **IN RE: JAVIER JAIME AND LILIANA LUIS**
[RSW-5](#)

MOTION TO MODIFY PLAN
11-15-2022 [[140](#)]

LILIANA LUIS/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.

Javier Osvaldo Jaime and Liliana Aide Luis (collectively "Debtors") seek an order confirming the *Fourth Modified Chapter 13 Plan* dated November 15, 2022. Doc. #140. The 60-month, 0% plan provides that Debtors shall pay a total of \$78,299.00 in plan payments through October 2022, and beginning November 2022, the plan payment will be \$2,794.00 per month. Doc. #144. The plan also contains provisions for payment to Classes 1 and 2 secured creditors, Loan Depot, and Nuvision Federal Credit Union, respectively. *Id.* Debtors' *Amended Schedules I and J* filed November 15, 2022 indicate that Debtors receive \$2,795.54 in monthly net income. Doc. #146.

In contrast, the operative *Third Modified Plan* dated February 14, 2022, confirmed May 19, 2022, provides for payments totaling \$62,024.00 through February 2022, and monthly payments of \$2,600.00 beginning March 2022, with the same 0% dividend to allowed, non-priority unsecured claims. Docs. #120; #135.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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.

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

2. [22-11710](#)-B-13 **IN RE: DAVID/NANCY HALL**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL
ASSOCIATION
12-2-2022 [[25](#)]

U.S. BANK NATIONAL
ASSOCIATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained in part; overruled in part.

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

U.S. Bank National Association ("Creditor") objects to confirmation of the *Chapter 13 Plan* ("Plan") filed by David Lance Hall and Nancy Lee Hall (collectively "Debtors") on November 1, 2022. Doc. #25.

Though not required, Debtors responded. Doc. #36.

This matter will be called and proceed as scheduled. The court intends to SUSTAIN IN PART and OVERRULE IN PART this objection.

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.

On the petition date, Creditor had a claim secured by real property commonly known as 12518 Branch Court, Bakersfield, CA 93312

("Property") in the approximate sum of \$58,353.88, including arrears in the amount of \$31,618.56. Doc. #25; *cf.* Claim 15-1. Copies of the promissory note and deed of trust are attached as exhibits; however, the exhibits were not supported by any authenticating or identifying declarations. Doc. #27; *see also*, Fed. R. Evid. 901. The court notes that Creditor also has a \$679,197.30 claim secured by Property, which includes \$241,049.15 in arrears. *See* Claim 14-1. That claim does not appear to be the subject of this objection.

Creditor is listed in the Plan as a Class 4 creditor: secured claims paid directly by the Debtors that will mature after completion of the plan, are not in default, and are not modified by the plan. Doc. #18. The Plan proposes that Debtors shall pay Creditor directly \$2,700.00 per month, but it is unclear whether this payment is applicable to Creditor's Claim 14, Claim 15, or both. Nonstandard provision 7.01 provides:

Section 3.10 is modified to provide that Debtors are seeking a loan modification with Class 4 secured creditor US Bank Home Mortgage. The loan is not current now, and based on communications with Creditor, Debtors expect the payment to be \$2,700.00 monthly. If the loan modification is granted, Debtors will be current.

Id.

First, Creditor objects to confirmation of the Plan under 11 U.S.C. § 1322(b)(5) because the plan fails to provide for the curing of the default on Creditor's claim. Doc. #25.

In response, Debtors claim that Creditor has no real reason to object to the Plan, because it will be given stay relief and objecting will delay such stay relief. Doc. #36. Debtors say there will not be *res judicata* if the Plan is confirmed because Nonstandard Provision 7 states that the payments are not current.

Section 3.02 of the Plan provides that it is the proof of claim, not the Plan itself, that determines the amount that will be repaid under the Plan. Doc. #18. Creditor's Claim 15, filed December 13, 2022, states a claimed arrearage of \$31,418.56. But if the Plan is confirmed, the automatic stay will be terminated for Class 4 creditors. Plan, *id.* § 3.14. Debtors may need to modify the Plan to account for the arrearage. If they do not and the Plan is confirmed, Creditor will have stay relief, and if the Plan is modified, then this objection may be moot. With respect to the payment on account of Creditor's claim, the objection will be **OVERRULED IN PART**.

However, Creditor is still improperly listed in Class 4 because its claim is in default, and Class 4 is limited to claims that mature after completion of the Plan, are not in default, and are not modified

by the Plan. Since this classification violates the express terms stated in the Plan, Creditor's objection will be SUSTAINED IN PART.

Creditor's claim is not eligible for Class 4 notwithstanding any benefit of stay relief conferred to Creditor by its Class 4 designation. At present, any loan modification is speculative despite Debtor's intentions, so the Plan is not currently confirmable. If Debtor is successful in obtaining a loan modification, Debtor can file a new, modified plan, but the Plan as is cannot be confirmed.

Second, Creditor objects under § 1325(a)(6) because the Plan fails to provide how Debtors will be able to make all payments under the Plan and comply with the Plan. Doc. #25. In addition to the \$2,700.00 Class 4 payment to Creditor, Debtors will be required to make monthly payments of \$942.00 per month for 36 months to Trustee. Doc. #18. However, Debtors' schedules indicate that they have monthly net income of only \$941.82 per month. Doc. #17. If Creditor's entire claim and arrearage are fully provided for in the Plan, Debtors will have insufficient income to fund the proposed Plan.

Debtors acknowledge that they will have insufficient monthly net income to fund the Plan if the parties are unable to agree on a loan modification. Doc. #36. As above, any loan modification is speculative until completed. Therefore, the Plan is infeasible as proposed.

This matter will be called and proceed as scheduled to inquire about the status of Debtors' loan modification. The court is inclined to SUSTAIN IN PART this objection because Creditor's claim is designated as Class 4 despite being in default and the Plan is not feasible. The objection will be OVERRULED IN PART as to the amount repaid to Creditor under the Plan because it is the proof of claim, not the Plan itself, that determined the amount Creditor will be repaid.

3. [22-11710](#)-B-13 **IN RE: DAVID/NANCY HALL**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
12-2-2022 [[29](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained in part; overruled in part.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* ("Plan") filed by David Lance Hall and Nancy Lee Hall (collectively "Debtors") on November 1, 2022. Doc. #29.

Though not required, Debtors responded. Doc. #38.

This matter will be called and proceed as scheduled. The court intends to SUSTAIN IN PART this objection because a secured creditor is improperly designated as Class 4 and the Plan does not appear to be feasible.

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.

Trustee objects for four reasons: (1) the Plan fails to provide for the full payment, in deferred cash payments, of all claims entitled to priority under 11 U.S.C. § 507 [11 U.S.C. § 1322(a)]; (2) the Plan fails to provide for the value, as of the effective date of the Plan, of property to be distributed under the Plan on account of each allowed unsecured claim in at least the amount that would be paid if the estate were liquidated under chapter 7 [§ 1325(a)(4)]; (3) Debtors will not be able to make all payments under the Plan and comply with the Plan [§ 1325(a)(6)]; and (4) the Plan has not been proposed in good faith and/or Debtors filed the petition in bad faith [§ 1307(a)(3) & (a)(7)]. Doc. #29.

First, Debtors' schedules and Plan provide for payment of a priority claim to the Internal Revenue Service ("IRS") in the sum of \$1,000.00. Doc. #18. However, the IRS filed a priority claim for taxes or penalties owed under § 507(a)(8) in the sum of \$5,767.81, so the Plan fails to provide for all claims entitled to priority. See Claim 9-1.

Second, Debtors scheduled a \$5,000.00 ownership interest in a "Cabin" with a total value of \$20,000.00. *Sched. A/B* ¶ 1.2, Doc. #17. No other information is provided. *Schedules G & H* do not reflect any executory contracts, unexpired leases, or co-debtors in the cabin. *Id.* However, *Schedule A/B* does indicate that the "Hall Trust" holds the title to Debtors' home and cabin. Trustee objects because Debtors have not met their burden of proof that the unsecured creditors would not receive a return if the cabin was liquidated under chapter 7. Doc. #29.

Third, Trustee notes that Debtors previously filed chapter 13 case no. 22-10628 on April 12, 2022, which was dismissed on August 4, 2022 for failure to make plan payments. Doc. #29. According to Debtors'

Statement of Financial Affairs, joint debtor David Lance Hall received the following combined gross income from employment or from operating a business in the last three years:

	<u>David Hall</u>	<u>Nancy Hall</u>
a. January 1, 2022 to petition date:	\$514.57	\$0.00
b. Year 2021:	\$3,647.92	\$0.00
c. Year 2020:	\$4,973.25	\$0.00

Doc. #17. Joint debtor Nancy Lee Hall received \$0.00 from these sources over the same time period. *Id.* ¶ 4 at 2. Additionally, Debtors received the following other income from Social Security:

	<u>David Hall</u>	<u>Nancy Hall</u>
a. January 1, 2022 to petition date:	\$18,900.00	\$10,170.90
b. Year 2021:	\$18,590.00	\$9,120.00
c. Year 2020:	\$0.00	\$9,120.00

Id. ¶ 5 at 2. Trustee has requested documents such as bank statements to review the income from rent receipts, contributions, and insurance commissions, but none have been provided. Doc. #29. Thus, Trustee objects because Debtors have failed to prove that they are able to make all payments under the Plan.

Fourth, Trustee claims that Debtors are not entitled to a discharge. *Id.* Debtors have failed in two petitions to provide information to Trustee and now seek to discharge \$198,000 in unsecured debt with a 36-month plan, to reduce the interest rate on their vehicle, and to surrender solar panels that Debtors know will not be removed. Additionally, Debtors violate the express language in the Plan by placing secured creditor U.S. Bank in Class 4 despite being in default.

"Good faith" is not specifically defined and is subject to multiple interpretations. *In re Goeb*, 675 F.2d 1386, 1388 (9th Cir. 1982). Whether a plan is filed in good faith is determined by the totality of the circumstances. *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999). The test to determine "good faith" includes: (1) whether the debtor has misrepresented facts, manipulated the Bankruptcy Code or filed in an inequitable manner; (2) the debtor's history of bankruptcy filings; (3) whether the debtor intended to frustrate the collection of state court judgments; and (4) whether "egregious behavior is present." *In re Welsh*, 711 F.3d 1120, 1132 (9th Cir. 2013). Trustee contends evidence of bad faith exists based on Debtors' previous filings, lack of payments, failure to provide documents, and manipulation of the Plan to include creditors in provision that are not applicable. Doc. #29.

In response, Debtors' attorney placed the mortgage in Class 4 because, in another case, he was advised to place a similarly situated creditor in Class 4 with an explanation in the Additional Provisions, so that is what was done here. Doc. #38. Otherwise, U.S. Bank would not be listed as a creditor at all in the place, which Debtors say would not serve the purpose of the Debtors or the creditor.

But U.S. Bank is still improperly listed in Class 4 because its claim is in default, and Class 4 is limited to claims that mature after completion of the Plan, are not in default, and are not modified by the Plan. Since this classification violates the express terms stated in the Plan, this objection will be SUSTAINED IN PART.

U.S. Bank's claim is not eligible for Class 4 notwithstanding any benefit of stay relief conferred to it by its Class 4 designation. At present, any loan modification is speculative despite Debtor's intentions, so the Plan is not currently confirmable. If Debtor is successful in obtaining a loan modification, Debtor can file a new, modified plan, but the Plan as is cannot be confirmed.

Second, Debtors intend to pay all priority claims other than domestic support obligations in full, regardless of the estimated amounts owed. Docs. ##38-39. Debtors acknowledge that they may be required to increase their monthly plan payment if the Plan is not feasible. *Id.*

Joint debtor David Hall declares that Debtors became sick, and he was hospitalized, after filing their first chapter 13 bankruptcy in 2022. Doc. #39. That case was precipitated by a foreclosure despite being offered a loan modification. Although joint debtor Nancy Hall is still sick, Mr. Hall is able to work. *Id.*

Third, Mr. Hall declares that he owns a 25% interest in a cabin that is worth \$20,000.00. Doc. #39. Debtors claim to have provided all information about it, as well as their trust, to Trustee. *Id.*

Fourth, although Debtors' prior income history was insufficient to afford the plan payment and living expenses, Mr. Hall has recently obtained employment with a base salary and the ability to earn substantial commissions. *Id.* The requested documentation about income has been provided to Trustee.

Lastly, Debtors contend that the Plan was not filed in bad faith; rather, Debtors became ill after filing their prior case. *Id.* However, if Debtors do not modify their mortgage loan, their house will likely be foreclosed.

This matter will be called and proceed as scheduled to inquire whether Trustee received the trust and cabin documents, whether those documents indicate that allowed, non-priority unsecured claims will be paid at least as much as they would receive in a chapter 7, the effect of payment in full of all priority claims, and Debtors' good faith in

filing the Plan. The court will also inquire about the status of a loan modification with U.S. Bank. The court intends to SUSTAIN IN PART the objection because U.S. Bank is improperly classified in Class 4, and the plan is not feasible.

4. [22-11710](#)-B-13 **IN RE: DAVID/NANCY HALL**
[MHM-2](#)

MOTION TO DISMISS CASE
12-2-2022 [[32](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or continued.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case for cause, including: (1) unreasonable delay by the debtors that is prejudicial to creditors [11 U.S.C. § 1307(c)(1)]; (2) failure to make all payments due under the plan [§ 1307(c)(1) & (c)(4)]; (3) failure of joint debtor Nancy Hall to appear at the 341 Meeting of Creditors on November 29, 2022; (4) failure to provide copies of all payment advices or other evidence of payment received within the 60 days before filing the petition [§ 521(a)(1)(B)(iv), (i)(1), & LBR 1007-1(c)(1)]; and (5) failure to cooperate with the trustee [§§ 521(a)(3)(4), 1307(c). Doc. #32.

David Lance Hall and Nancy Lee Hall (collectively "Debtors") timely filed written opposition. Doc. #41.

This matter will be called and proceed as scheduled. The court will inquire whether Debtors are current on plan payments, whether Trustee has received and reviewed Debtors' bank statements, information about their new job, and all exhibits to the trust and list of assets of the trust. If not, this motion may be GRANTED, and the case dismissed. If so, this motion may be CONTINUED to a date determined at the hearing pending the conclusion of the 341 meeting of creditors.

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

mentioned parties in interest except Debtors are entered. 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).

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

First, Trustee notes that the chapter 13 plan includes the Class 4 claim of US Bank Home Loans, which is not current. Doc. #32. Since creditors in Class 4 are secured claims that are not in default and that are not modified by the plan, placing this claim in Class 4 constitutes a sanctionable action by Debtors' counsel, claims Trustee. *Id.*

Second, Trustee says that Debtors have made no payments to Trustee as of the date of this motion in either this case or Debtors' prior chapter 13 case, Case No. 22-10628, which was filed on April 12, 2022 and dismissed on August 4, 2022. *Id.*; Doc. #34.

Third, joint debtor Nancy Hall failed to appear at the November 29, 2022 meeting of creditors. *Id.*

Fourth, Debtors failed to provide copies of all payment advices or other evidence of payments received in the 60 days prior to filing bankruptcy. *Id.* Trustee sent a letter to Debtors' counsel requesting these documents on October 5, 2022. The last day to file this document was November 18, 2022.

Lastly, Debtors failed to cooperate with Trustee by providing all exhibits to the "Trust" and the list of assets claimed to be assets of the trust. *Id.*

Trustee has reviewed the schedules and determined that Debtors' significant assets—vehicles and real property—are over-encumbered, and the remaining assets are exempted. Doc. #73. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion, serves the interests of creditors and the estate.

In response, Debtors first claim that they became ill after filing the previous case, which limited their ability to make any plan payments. Doc. #41. Additionally, Debtors listed the creditor in Class 4 with an explanation to apprise the court and the Trustee of Debtors' intentions regarding their loan modification. *Id.*

Second, Debtors are the victims of identity theft, which resulted in direct deposits being diverted to someone else's account. *Id.* Although their plan payments are not current, Debtors indicate that they will become current before the hearing. However, one payment may not post before the hearing date.

Third, Debtors are scheduled to appear at the continued meeting of creditors on January 10, 2023. *Id.*

Fourth, Debtors claim that the only income received within 60 days of the filing date was from commissions of the now-closed business, which is reflected on the bank statements provided to the Trustee. *Id.* Information about Debtors' new job has been provided.

Fifth, Debtors claim that a list of all trust assets has been provided to the Trustee. *Id.*

This matter will be called and proceed as scheduled. The court will inquire whether Debtors are current on plan payments, whether Trustee has received and reviewed Debtors' bank statements, information about their new job, and all exhibits to the trust and list of assets of the trust. If not, this motion may be GRANTED, and the case dismissed. If so, this motion may be CONTINUED to a date determined at the hearing pending the conclusion of the 341 meeting of creditors.

5. [22-11712](#)-B-13 **IN RE: PEDRO RODRIGUEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
12-2-2022 [[24](#)]

MICHAEL MEYER/MV
DISMISSED 12/7/22

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was already entered on December 7, 2022. Doc. #31. Accordingly, the motion will be DENIED AS MOOT.

6. [22-10218](#)-B-13 **IN RE: CHASE/ANGELA ATKINS**
[RSW-1](#)

CONTINUED MOTION TO MODIFY PLAN
10-3-2022 [[22](#)]

ANGELA ATKINS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This motion was originally heard on December 7, 2022. Doc. #30.

Chase Patrick Atkins and Angela Crystine Atkins (collectively "Debtors") moved for an order confirming the *First Modified Chapter 13 Plan* dated October 3, 2022. Doc. #22. The 60-month plan proposes that Debtors shall pay plan payments totaling \$20,000.00 through August 2022, and beginning September 2022, the monthly plan payment is \$2,415.00. Doc. #26. The plan also retains a \$1,488.44 monthly payment directly from Debtors to Class 4 creditor Flagstar Bank and provides for a 100% dividend to allowed, non-priority unsecured claims. Further, beginning September 2022, the plan reduces the attorney fee dividend to \$200.00, the Class 2(A) dividend to Valley Strong Credit Union to \$683.87, and the Class 2(A) dividend to Westmerica Bank to \$1,350.00. *Id.* Debtors' *Amended Schedules I and J* dated May 2, 2022 indicate that Debtors receive \$4,717.25 in monthly net income, which is sufficient to pay the proposed plan payment plus the direct payment to the Class 4 creditor, totaling \$3,903.44.

In contrast, the operative *Chapter 13 Plan* dated February 17, 2022, confirmed May 19, 2022, provides that Debtor will make 60 plan payments of \$3,500.00 per month plus the \$1,488.44 direct monthly payment to the Class 4 creditor, totaling \$4,988.44, with a 100% dividend to allowed, non-priority unsecured claims. Docs. #3; #17. The operative confirmed plan also provides that Debtors will pay student loan creditor Department of Education/Nelnet outside of the plan as long-term debts. *Id.*

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to Debtors' motion to modify plan under 11 U.S.C. § 1322(a) because the plan fails to provide for submission of all or such portion of future earnings or other future income to the supervision and control of the Trustee as is necessary to execute the plan. Doc. #28. Trustee noted that the proposed modified plan removes the additional provision regarding direct payment to the student loan creditor, which means that they will be paid as a general unsecured creditor on account of their Claim 6 in the amount of \$7,669.99. *Id.* Thus, the plan as proposed does not fund, but Trustee said that this issue could be resolved by increasing the plan payment to \$2,580.00 per month effective November 2022. *Id.*

At the hearing on December 7, 2022, the matter was continued to January 4, 2023 and Debtors were directed to file and serve a written response not later than December 21, 2022 or a confirmable modified plan not later than December 28, 2022. Docs. ##30-31. Debtors neither filed a response nor a modified plan.

On December 21, 2022, Debtors filed amended schedules indicating their current monthly net income is \$2,789.97 per month. Doc. #33. This matter will be called and proceed as scheduled to inquire about the parties' positions and why Debtors did not file a response or modified plan.

7. [22-11818](#)-B-13 **IN RE: ARNOLDO OLAGUE**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FEDERAL HOME LOAN
MORTGAGE CORPORATION
12-20-2022 [[23](#)]

FEDERAL HOME LOAN MORTGAGE
CORPORATION/MV
VINCENT QUIGG/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Federal Home Loan Mortgage Corporation, as Trustee for the benefit of the Seasoned Loans Structured Transaction Trust, Series 2018-1 ("Creditor"), objects to confirmation of the *Chapter 13 Plan* filed by Arnaldo Olague ("Debtor") on October 25, 2022 pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4). Doc. #23.

On December 20, 2022, the same day that this objection was filed, Debtor filed an amended plan. Doc. #22. Even though no separate notice of hearing was filed, it appears to be set for hearing on January 25, 2023. Doc. #21. Accordingly, this objection to confirmation will be OVERRULED AS MOOT because Debtor has filed an amended plan.

8. [22-11720](#)-B-13 **IN RE: ERIN STEVENSON**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
12-6-2022 [[24](#)]

MATTHEW DECAMINADA/ATTY. FOR DBT.

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

DISPOSITION: Continued to February 8, 2023 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 Erin David Stevenson ("Debtor") on October 5, 2022 pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4). Doc. #24. Trustee objects because (1) Debtor has not scheduled all debts required to be scheduled pursuant to 11 U.S.C. § 521(a); (2) Debtor has not filed all applicable tax returns required by § 1325(a)(9); and (3) the plan fails to provide for the value, as of the effective date of the plan, of property to be distributed under the plan on account of each unsecured claim in at least the amount that would be paid if the estate was liquidated under chapter 7. *Id.*

This objection will be CONTINUED to February 8, 2023 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 Debtor shall file and serve a written response not later than January 25, 2023. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of Debtor's position. Trustee shall file and serve a reply, if any, by February 1, 2023.

If 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 February 1, 2023. If the Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without a further hearing.

9. [22-11741](#)-B-13 **IN RE: JOSEPH MARTIN**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
11-30-2022 [[24](#)]

TOYOTA MOTOR CREDIT
CORPORATION/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

DISPOSITION: Continued to February 8, 2023 at 9:00 a.m.

ORDER: The court will issue an order.

Toyota Motor Credit Corporation dba Lexus Financial Services ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed on October 24, 2022 by Joseph Wayne Martin ("Debtor") pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4). Doc. #24. Creditor's \$29,392.07 claim is secured by a 2016 Lexus GX460 ("Vehicle"), which is listed as a Class 2(A) claim in the amount of \$28,972.00.

Creditor objects because its claim is modified by the plan, but no motions to value collateral have been filed. Moreover, Creditor contends that the plan fails to use the appropriate "prime-plus" or "formula rate" interest rate as required by § 1325(a)(5)(B) and outlined in the Supreme Court's ruling in *Till v. SCS Credit Corp.* (*In re Till*), 541 U.S. 465 (2004). Lastly, the plan proposes monthly payments of \$4,770.00, but Debtor's monthly net income is only \$3,750.06 according to the schedules at the time this objection was filed.

This objection will be CONTINUED to February 8, 2023 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 Debtor shall file and serve a written response not later than January 25, 2023. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of Debtor's position. Trustee shall file and serve a reply, if any, by February 1, 2023.

If 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 February 1, 2023. If the Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without a further hearing.

10. [22-11650](#)-B-13 **IN RE: ROY ZUBIA**
[MHM-1](#)

MOTION TO DISMISS CASE
11-17-2022 [[17](#)]

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

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED

The chapter 13 trustee withdrew this motion on December 27, 2022. Doc. #29. Accordingly, this matter will be dropped and taken off calendar pursuant to the trustee's withdrawal.

11. [22-11650](#)-B-13 **IN RE: ROY ZUBIA**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-21-2022 [[21](#)]

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

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Roy Cornelius Zubia's ("Debtor") claim of exemption in real property located at 2013 Padre St., Bakersfield, CA ("Property") under Cal. Code Civ. Proc. ("CCP") § 704.730 in the amount of \$313,207.00. Doc. #21. Since Debtor acquired an interest Property less than 1215 prior to the petition date, Trustee objects to any homestead exemption exceeding \$189,050.00. *Id.*, citing § 522(p)(1); *In re Greene*, 583 F.3d 614, 621 (9th Cir. 2009); *In re Rogers*, 513 F.3d 212, 224 (5th Cir. 2008).

On November 23, 2022, Debtor filed *Amended Schedules A/B & C*. Doc. #25. In *Amended Schedule C*, Debtor reduced the claimed homestead exemption to \$189,050.00 under CCP § 704.730. *Id.* Accordingly, Trustee's objection will be OVERRULED AS MOOT.

12. [22-11586](#)-B-13 **IN RE: CHERYLANNE FARLEY**
[MHM-1](#)

MOTION TO DISMISS CASE
11-15-2022 [[22](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or continued.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) and (c)(4) because the debtor has failed to make all payments due under the *Chapter 13 Plan* dated October 3, 2022 ("Original Plan"). Doc. #22.

Cherylanne Lee Farley ("Debtor") timely opposed. Doc. #41. That same day, Debtor also filed the *First Modified Chapter 13 Plan* dated December 21, 2022 ("Proposed Plan"), which is set for confirmation hearing on February 8, 2023. Doc. #36; RSW-2.

This matter will be called and proceed as scheduled. The court will inquire whether Debtor has cured the alleged deficiency by being current under the Proposed Plan; if not, this motion may be GRANTED, and the case dismissed. If Debtor is current under the Proposed Plan, this motion may be CONTINUED to the date and time of the motion to confirm the Proposed Plan.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtor are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

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 timely payments.

Here, Trustee declares that Debtor has failed to make all payments due under the Original Plan. Doc. #24. As of November 15, 2022, payments are delinquent in the amount of \$2,208.00. *Id.* Prior to this hearing, two additional plan payments of \$2,208.00 per month will become due on November 25 and December 25, 2022. *Id.* Thus, if no payments were made under the Original Plan by the time of the hearing, the total delinquency would be \$6,624.00.

Trustee has reviewed the schedules and determined that Debtor’s significant assets—vehicles and real property—are over-encumbered, and the remaining assets are exempted. Doc. #22. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion, serves the interests of creditors and the estate.

In response, Debtor filed the Proposed Plan and claims to have paid \$2,250.00 in December, which has posted. Doc. #41. The Proposed Plan requires Debtor to make an additional payment of \$2,400.00 by December 27, 2022, which Debtor says she can pay. *Id.*; Doc. #36.

The court notes that Nonstandard Provision 7.01 of the Proposed Plan provides that Debtor shall pay a total of \$4,720.00 in plan payments through December 2022. Proposed Plan § 7.01, Doc. #36. If Debtor did in fact pay \$2,250.00 earlier in December and pays \$2,400.00 by December 27, 2022 (totaling \$4,650.00 in plan payments), Debtor will still be delinquent \$70.00 under the Proposed Plan through December 2022.

This matter will be called and proceed as scheduled. The court will inquire whether Debtors are current on plan payments under the Proposed Plan. If not, this motion may be GRANTED, and the case dismissed. If Debtor is current under the Proposed Plan, this motion may be CONTINUED to February 8, 2023 at 9:00 a.m. to be heard in connection with the motion to confirm the Proposed Plan.

13. [22-11586](#)-B-13 **IN RE: CHERYLANNE FARLEY**
[MHM-2](#)

MOTION TO DISMISS CASE
11-17-2022 [[26](#)]

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

TENTATIVE RULING: This matter will proceed 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.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) and (e) for unreasonable delay by the debtor that is prejudicial to creditors by failing to appear at the continued § 341 meeting of creditors on November 15, 2022, and failure to file tax returns for all taxable periods during the 4-year period before filing the petition. Doc. #26.

Cherylanne Lee Farley ("Debtor") timely opposed. Doc. #41. That same day, Debtor also filed the *First Modified Chapter 13 Plan* dated December 21, 2022 ("Proposed Plan"), which is set for confirmation hearing on February 8, 2023. Doc. ##32-33; RSW-2.

This matter will be called and proceed as scheduled. The court will inquire whether Trustee is in receipt of the 2017 through 2021 tax returns; if not, this motion may be GRANTED, and the case dismissed. If so, this motion may be DENIED WITHOUT PREJUDICE.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtor are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

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 (e) for unreasonable delay by the Debtor that is prejudicial to creditors, and failure to file a tax return under § 1308.

Here, Trustee declares that Debtor failed to (1) appear at the continued 341 meeting of creditors on November 15, 2022 and (2) file state tax returns for the years 2019, 2020, and 2021. Doc. #28.

Trustee has reviewed the schedules and determined that Debtor’s significant assets—vehicles and real property—are over-encumbered, and the remaining assets are exempted. Doc. #26. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion, serves the interests of creditors and the estate.

In response, Debtor declares that the Franchise Tax Board (“FTB”) returns for 2017-2021 were signed and mailed in early December. Doc. #33. Debtor spoke to the FTB, who advised that the returns were received and processed, but that an amended proof of claim may not be filed until January 2023.

Additionally, Debtor attended the continued 341 meeting of creditors on December 13, 2022, and the meeting was concluded as to Debtor. See docket generally.

This matter will be called as scheduled to inquire whether Trustee has received the tax returns. However, Debtor’s declaration indicates that the 2017-2021 FTB tax returns were filed in early December. If no other tax returns were delinquent, this motion may be DENIED WITHOUT PREJUDICE. If other tax returns were due and have not been filed, this motion may be GRANTED.

14. [20-12990](#)-B-13 **IN RE: SIMPLICIO/SALUD SABERON**
[RSW-4](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE
REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY,
AS TO DEBTOR AND NOTICE OF DEATH OF A DEBTOR
11-10-2022 [\[63\]](#)

SALUD SABERON/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

On August 23, 2021, joint debtor Simplicio A. Saberón (“Decedent”) passed away. *Ex. 1*, Doc. #65. He is survived by his wife, joint debtor Salud Pablo Saberón (“Debtor”). Doc. #66. Debtor seeks to (1) be

substituted as the representative for or successor to Decedent for this joint chapter 13 case; (2) authorize the continued administration of the chapter 13 case after Decedent's death; and (3) waive the § 1328 certification requirements for entry of discharge with respect to Decedent. Doc. #66.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. 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 granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Upon the death of a debtor in a bankruptcy case that has not been closed, LBR 1016-1(a) provides that a notice of death shall be filed within sixty (60) days of the death of a debtor by counsel or the person intending to be appointed as the representative for or successor to a deceased debtor pursuant to Fed. R. Civ. P. 25(a) (Fed. R. Bankr. P. 7025). The notice of death shall be served on all other parties in interest, and a redacted copy of the death certificate shall be filed as an exhibit to the notice of death.

LBR 1016-1(b) permits the notice of death and requests for the following relief to be combined into a single motion for omnibus relief under Fed. R. Civ. P. 18(a) (Fed. R. Bankr. P. 7018, 9014(c)):

- 1) Substitution as the representative for or successor to the deceased debtor in the bankruptcy case pursuant to Fed. R. Civ. P. 25(a);
- 2) Continued administration of the case under chapter 13 pursuant to Fed. R. Bankr. P. 1016; and
- 3) Waiver of the post-petition education requirement for entry of discharge under 1328, including the post-petition education requirement under subsection (g).

Pursuant to LBR 1016-1, Debtor filed this motion for omnibus relief with a notice of death and redacted death certificate for Decedent. Docs. #63; #65. The court notes that both Debtor and Decedent filed certificates of post-petition debtor education on October 29, 2020 pursuant to 11 U.S.C. § 1328(g). Docs. ##19-20.

If a reorganization or individual's debt adjustment case is pending under chapter 13, Fed. R. Bankr. P. 1016 permits the case to proceed and be concluded in the same manner, so far as possible, as though the death had not occurred if two pre-requisites are met: (1) further

administration is possible and (2) administration is in the best interest of all parties. However, Fed. R. Bankr. P. 1016 also allows the case to be dismissed.

Courts have held that chapter 13 cases do not need to be dismissed and may continue if (1) the debtor proposed a confirmable plan before the debtor's death; and (2) the plan is feasible after the debtor's death. *In re Perkins*, 381 B.R. 520, 537 (Bankr. S.D. Ill. 2007) (permitting further administration because it is both possible and in the best interests of parties); *In re Stewart*, 2004 Bankr. LEXIS 1042 (Bankr. D. Or. Mar. 2, 2004) (continued administration permitted if a personal representative is appointed and the confirmed plan is made current and paid through completion); cf. *In re Spider*, 232 B.R. 669, 674 (Bankr. N.D. Tex. 1999) (further administration deemed not possible because debtors' chapter 13 plan was not confirmed before death).

Here, the debtors filed chapter 13 bankruptcy on September 16, 2020. Doc. #1. Their *Chapter 13 Plan* dated September 16, 2020, confirmed January 7, 2021, provided for 36 monthly payments of \$100.00. Docs. #2; #32. The plan also provided for paying Class 4 creditor Select Portfolio Servicing, Inc. \$1,268.12 per month in connection with its security interest in the debtors' residence. The 36th month after the petition date is September 2023, so approximately eight months are remaining in the plan.

Debtor's *Amended Schedules I & J* indicate that Debtor is retired with a monthly gross income of \$3,299.50, which consists of \$2,349.50 in social security income and a combined monthly contribution of \$950.00 from Debtor's son and daughter. Doc. #60. A copy of Debtor's daughter's pay statement is included as an exhibit. Doc. #65. Debtor incurs \$3,198.10 in monthly expenses, including her mortgage payment, leaving \$101.40 in monthly net income. *Id.* Debtor's monthly income appears to be sufficient to fund the \$100.00 plan payment. *Id.*

Debtor declares that further administration of this case is possible because she can continue making the monthly plan payment with the help of her son and daughter. Doc. #66. However, the declaration states that Debtor's daughter will contribute approximately \$250.00 per month, and Debtor's son will contribute approximately \$100.00 per month. *Id.* This \$350.00 combined contribution contradicts the \$950.00 contribution purported in the amended schedules.

Only eight months are remaining in the plan, but it is questionable whether Debtor can afford to maintain the monthly plan payment. If Debtor's children only contribute \$350.00 per month rather than the \$950.00 in the schedules, then Debtor would not have \$101.40 in monthly net income, and instead would be incurring a monthly deficit of -\$498.60 per month.

In addition to that problem, the evidence supporting the feasibility of continuing the case is lacking. First, there is no foundation for

the admission of the daughter's pay stub. Second, there is no declaration from the daughter or the son evidencing their ability and commitment to make up the shortfall.

This matter will be called and proceed as scheduled to inquire about the monthly contribution from Debtor's children and whether continued administration of the case is possible.

10:00 AM

1. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[HSM-1](#)

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

SIGNATURE FINANCIAL LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
THOMAS GRIFFIN/ATTY. FOR MV.
HEARD ON 12/20 PER OST DOC. #324

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

DISPOSITION: Dropped and taken off calendar.

NO ORDER REQUIRED.

The motion was heard on December 20, 2022, and the court entered an order (Doc. #370) granting this motion.

2. [20-13420](#)-B-7 **IN RE: CHRISTOPHER MARTENS**
[JMV-1](#)

MOTION FOR COMPENSATION FOR JEFFREY M. VETTER, CHAPTER 7
TRUSTEE(S)
12-7-2022 [[144](#)]

JEFFREY VETTER/MV
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") requests an order approving a statutory commission of \$41,600.30 with expenses of \$757.80 pursuant to 11 U.S.C. § 330(a). Doc. #144.

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

LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

Here, Trustee filed an *Application for Order Authorizing Trustee to Employ Real Estate Broker* on December 9, 2020. Doc. #22. The application was granted on December 17, 2020. Doc. #32. The DCN for that application was JMV-1.

Nearly two years later, Trustee filed this *Application for Approval and Payment of Trustee Commission and Expenses* on December 7, 2022. Doc. #144. The DCN for this application is also JMV-1, and therefore it does not comply with the local rules. Each new motion, application, or other request for relief requires a different, unused DCN.

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

3. [22-11926](#)-B-7 **IN RE: ALBERT GRIMES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-28-2022 [\[13\]](#)

WILLIAM EDWARDS/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 12/9/2022

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the fees now due have been paid. Accordingly, the order to show cause will be VACATED.

4. [22-11477](#)-B-7 **IN RE: JENNA EYRAUD**
[UST-1](#)

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE
WITHOUT ENTRY OF DISCHARGE
12-6-2022 [\[17\]](#)

TRACY DAVIS/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
TREVOR FEHR/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 approving a stipulation with Jenna Eileen Eyraud ("Debtor") to dismiss this chapter 7 case without entry of discharge. Docs. #17; #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 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.

Debtor filed chapter 7 bankruptcy on August 26, 2022. Doc. #1. The initial § 341 meeting of creditors was held on October 7, 2022, continued to October 21, 2022, continued again to November 4, 2022, and finally continued to November 18, 2022, at which it concluded. See docket generally.

On November 28 2022, UST filed a statement of presumed abuse pursuant to 11 U.S.C. § 704(b)(1)(A). Doc. #13. The deadline to object to discharge pursuant to 11 U.S.C. § 727 or to file a motion to dismiss pursuant to § 707(b)(1) and (b)(3) for abuse is December 6, 2022. Doc. #2; Fed. R. Bankr. P. 1017(e)(1).

UST is prepared to file a motion to dismiss for abuse under 11 U.S.C. § 707(b)(1), (b)(2) (presumed abuse), and/or (b)(3) (bad faith and/or totality of circumstances abuse). However, Debtor does not wish to defend UST's allegations and, through Debtor's attorney, has stipulated to dismissal of this chapter 7 bankruptcy without entry of discharge on December 5, 2022. Doc. #19.

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).

Here, UST is prepared to file a motion to dismiss pursuant to § 707(b)(1)-(b)(3), but Debtor has opted to voluntarily dismiss the case instead. Doc. #19. No creditors timely filed written opposition, and there does not appear to be any benefit to creditors in keeping this case open.

Accordingly, the motion will be GRANTED. The stipulation to dismiss will be approved and the case will be dismissed. The proposed order shall include an attached copy of the stipulation as an exhibit.

10:30 AM

1. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
11-8-2022 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.
CONVERTED TO CHAPTER 7 ON 12/14/22

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

DISPOSITION: Concluded.

ORDER: The court will issue an order.

On December 14, 2022, the court issued an order converting this case to chapter 7. Doc. #290. Accordingly, the court will issue an order CONCLUDING this status conference, and it will be dropped and taken off calendar.

11:00 AM

1. [17-11028](#)-B-11 IN RE: PACE DIVERSIFIED CORPORATION
[18-1006](#) [CAE-1](#)

SCHEDULING CONFERENCE RE: COMPLAINT
2-5-2018 [[1](#)]

PACE DIVERSIFIED CORPORATION
ET AL V. MACPHERSON OIL
T. BELDEN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

The parties shall be prepared to discuss further scheduling for the accounting portion of this litigation.

11:30 AM

1. [22-11708](#)-B-7 **IN RE: KIMBERLY FRANCO**

REAFFIRMATION AGREEMENT WITH STRATA CREDIT UNION
12-5-2022 [[19](#)]

R. BELL/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

A Reaffirmation Agreement between debtor Kimberly Franco and Strata Credit Union for a 2014 Land Rover LR2 was filed on December 5, 2022. Doc. #19.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtor's attorney with the appropriate attestations. Pursuant to 11 U.S.C. § 524(d), the court need not approve the agreement.

2. [22-11817](#)-B-7 **IN RE: RAYMOND/LAURA NOEL**

REAFFIRMATION AGREEMENT WITH BRIDGECREST ACCEPTANCE
CORPORATION
11-28-2022 [[19](#)]

R. BELL/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel shall notify the debtors that no appearance is necessary.

A Reaffirmation between debtors Laura V. Noel and Raymond R. Noel (collectively "Debtors") and Bridgecrest Acceptance Corporation for a

2018 Dodge Challenger Coupe 2D SXT 3.6L V6 was filed on November 28, 2022. Doc. #19.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the Debtors' attorney with the appropriate attestations. Pursuant to § 524(d), the court need not approve the agreement.

3. [22-11743](#)-B-7 **IN RE: VERONICA VILLARREAL**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
12-8-2022 [[12](#)]

DAVID LOZANO/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

A Reaffirmation Agreement between Veronica Villareal ("Debtor") and Toyota Motor Credit Corporation for a 2017 Toyota Prius was filed on December 8, 2022. Doc. #12.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement.

Debtor was represented by counsel when entering into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009) (emphasis in original). In this case, Debtor's attorney affirmatively represented that the agreement established a presumption of undue hardship, but that in his opinion, Debtor is able to make the required payments. Doc. #12. Therefore, the agreement does not meet the requirements of § 524(c)(3)(B).

Accordingly, the Reaffirmation Agreement between Debtor and Toyota Motor Credit Corporation will be DENIED.

4. [22-11743](#)-B-7 **IN RE: VERONICA VILLARREAL**

REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE
CORPORATION
12-8-2022 [\[13\]](#)

DAVID LOZANO/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

A Reaffirmation Agreement between Veronica Villarreal ("Debtor") and American Honda Finance Corporation for a 2021 Honda Accord was filed on December 8, 2022. Doc. #13.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement.

Debtor was represented by counsel when entering into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009) (emphasis in original). In this case, Debtor's attorney affirmatively represented that the agreement established a presumption of undue hardship, but that in his opinion, Debtor is able to make the required payments. Doc. #13. Therefore, the agreement does not meet the requirements of § 524(c)(3)(B).

Accordingly, the Reaffirmation Agreement between Debtor and American Honda Finance Corporation will be DENIED.

5. [22-11848](#)-B-7 **IN RE: MARLOW WILSON**

REAFFIRMATION AGREEMENT WITH AUTO PAY, LLC/FIRST INVESTORS
SERVICES CORPORATION
12-14-2022 [\[14\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

A Reaffirmation Agreement between debtor Marlow Racquele Wilson and Auto Pay, LLC/First Investors Services Corporation for a 2016 KIA Forte LX was filed on December 14, 2022. Doc. #14.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtor's attorney with the appropriate attestations. Pursuant to § 524(d), the court need not approve the agreement.

6. [22-11463](#)-B-7 **IN RE: SEAN/DENISE HILDEBRAND**

REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE - 2020
KIA TELLURIDE
11-21-2022 [\[16\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

A Reaffirmation Agreement between debtors Sean Hildebrand and Denise Hildebrand and Capital One Auto Finance for a 2020 Kia Telluride Utility was filed November 21, 2022. Doc. #16.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtors' attorney with the appropriate attestations. *Id.* Pursuant to § 524(d), the court need not approve the agreement.

7. [22-11463](#)-B-7 **IN RE: SEAN/DENISE HILDEBRAND**

REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE - 2014
HYUNDAI ACCENT
11-21-2022 [\[17\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

A Reaffirmation between debtors Sean Hildebrand and Denise Hildebrand and Capital One Auto Finance for a 2014 Hyundai Accent Hatchback was filed November 21, 2022. Doc. #17.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtors' attorney with the appropriate attestations. *Id.* Pursuant to § 524(d), the court need not approve the agreement.

8. [22-11766](#)-B-7 **IN RE: DIANA OCEGUEDA**

REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL SERVICES,
INC.
12-1-2022 [\[14\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

A Reaffirmation Agreement between debtor Diana Elizabeth Ocegueda and Americredit Financial Services, Inc. dba GM Financial for a 2021 GMC Sierra 1500 was filed on December 1, 2022. Doc. #14.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtor's attorney with the appropriate attestations. *Id.* Pursuant to § 524(d), the court need not approve the agreement.

9. [22-11693](#)-B-7 **IN RE: CHARLES SULLIVAN**

REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.
11-29-2022 [[19](#)]

R. BELL/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

A Reaffirmation Agreement between debtor Charles Sullivan and Santander Consumer USA, Inc. for a 2020 Volkswagen Tiguan was filed on November 29, 2022. Doc. #19.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtor's attorney with the appropriate attestations. *Id.* Pursuant to § 524(d), the court need not approve the agreement.