



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
HONORABLE RENÉ LASTRETO II  
Department B – Courtroom #13  
Fresno, California**

**Hearing Date: Wednesday, January 10, 2024**

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) 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.

9:30 AM

1. [23-12701](#)-B-13      **IN RE: LILIBETH LICONA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-18-2023    [\[11\]](#)

JOHN DOWNING/ATTY. FOR DBT.  
\$313.00 FILING FEE PAID 12/20/23  
\$25.00 STILL DUE

TENTATIVE RULING:            This matter will proceed as scheduled.

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

ORDER:                        The court will issue an order.

Debtors' Attorney John Downing ("Attorney") filed a *Voluntary Petition* on behalf of Lilibeth Licona ("Debtor") on December 4, 2023. A fee of \$338.00 is required at the time of filing the petition. A *Notice of Payment Due* was served on Attorney and Debtor on December 10, 2023. Doc. #10.

On December 18, 2023, the Clerk of the court issued an *Order to Show Cause re Dismissal and/or Imposition of Sanctions for Failure to Tender Fees or an Application to Pay Fees in Installments with Bankruptcy Petition* directing Attorney to appear at the hearing and show cause why the motion should not be stricken, sanctions imposed on the party filer and/or their counsel, or other relief ordered for failure to comply with the provisions of 28 U.S.C. § 1930(b). Doc. #11.

On December 20, 2023, Attorney made a payment of \$313.00 leaving an amount due of \$25.00.

This matter will proceed as scheduled. If the remaining filing fee of \$25.00 is not paid prior to the hearing sanctions will be imposed including dismissal of the case on the grounds stated in the OSC.

2. [19-10708](#)-B-13     **IN RE: ANTONIO/MARTHA AVILES**  
[PFT-1](#)

CONTINUED MOTION TO APPROVE CHAPTER 7 TRUSTEE COMMISSION  
10-20-2023    [\[99\]](#)

PETER FEAR/MV  
T. O'TOOLE/ATTY. FOR DBT.

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

DISPOSITION:                    Granted.

ORDER:                            The moving party will enter the order in  
conformity with the following.

This needlessly overcomplicated case involves debtors who have gone from Chapter 13 to Chapter 7 and then back to Chapter 13, followed by a motion for voluntary dismissal of the case altogether which, after denial by this court, is presently on appeal to the 9th Circuit Bankruptcy Appellate Panel. None of the issues raised in that appeal, however, are germane to this specific matter, which the court will address on the merits.

Peter L. Fear ("Mr. Fear"), the Chapter 7 Trustee assigned to this case after it was converted to Chapter 7, brings this *Motion to Approve Chapter 7 Trustee Commission Pursuant to 11 U.S.C. § 326*. Doc. #99. The instant motion was filed on October 20, 2023, and it was accompanied by a *Stipulation* also signed by Antonio and Martha Aviles ("Debtors") who agreed to pay the proposed commission through their Chapter 13 plan. Doc. #102. The requested commission arises from the resolution of Mr. Fear's prior objection to reconversion of this case back to Chapter 13, as Mr. Fear would have been entitled to an estimated commission of \$18,250.00 from the sale of Debtors' home, but Mr. Fear was willing to let reconversion proceed in exchange for a \$5,000.00 administrative expense to be paid through their Chapter 13 plan, a proposal to which the Debtors agreed. Doc. #99.

Before the deadline for responses to the motion had run, however, the Debtors filed a motion to dismiss the underlying Chapter 13 bankruptcy case which the court improvidently granted. Docs. ##107, 109. That same day, Trustee filed a motion to vacate the dismissal (Doc. #111), which the court subsequently granted Doc. #113. The court then continued this matter to January 10, 2023, to give any interested parties opportunity to respond. Doc. #130.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely

respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest has responded by the continued deadline, and so the defaults of all such parties in interest are entered.

In the absence of any opposition and in light of the clear agreement of the parties as expressed through the Stipulation, this motion is GRANTED. The Chapter 7 Trustee shall be entitled to an administrative claim in the amount of **\$5,000.00** to be paid through Debtors' Chapter 13 plan.

3. [19-10708](#)-B-13     **IN RE: ANTONIO/MARTHA AVILES**  
[TMO-2](#)

CONTINUED MOTION TO MODIFY PLAN  
10-16-2023    [\[92\]](#)

MARTHA AVILES/MV  
T. O'TOOLE/ATTY. FOR DBT.  
T. O'TOOLE/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:     Denied.

ORDER:             The court will issue an order.

This needlessly overcomplicated case involves debtors who have gone from Chapter 13 to Chapter 7 and then back to Chapter 13, followed by a motion for voluntary dismissal of the case altogether which, after denial by this court, is presently on appeal to the 9th Circuit Bankruptcy Appellate Panel. None of the issues raised in that appeal, however, are germane to this specific matter, which the court will address on the merits.

On October 16, 2023, Antonio and Martha Aviles ("Debtors") filed a *First Modified Chapter 13 Plan* and a *Motion to Confirm* same. Docs. ##95, 92. On October 25, 2023, Michael H. Myer ("Trustee") filed an Objection to the First Amended Plan, asserting the following grounds:

1. The plan provides for payments to creditors for a period longer than 5 years in contravention of 11 U.S.C. § 1322(d).
2. Debtors will not be able to make all payments under the plan and comply with the plan's requirements as required by 11 U.S.C. § 1325(a)(6).

Doc. #105. On November 29, 2023, the court continued this matter to January 10, 2024, at 9:30 a.m. Debtors were directed to file and serve a written response to the objection not later than fourteen (14) days before the continued hearing date, or file a confirmable, modified plan in lieu of a response not later than seven (7) days before the continued hearing date, or the objection would be sustained on the grounds stated in the objection without further hearing. *Id.*

Debtors neither filed a timely written response nor a modified plan. Therefore, Trustee's objection to this motion will be SUSTAINED on the grounds stated therein, and the instant motion to modify will be DENIED.

4. [23-12110](#)-B-13     **IN RE: JORGE/ZENIA CHAVEZ**  
[SL-1](#)

MOTION TO CONFIRM PLAN  
11-16-2023    [\[24\]](#)

ZENIA CHAVEZ/MV  
SCOTT LYONS/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.

Jorge and Zenia Yvette Chavez ("Debtors") seek an order confirming the *First Modified Chapter 13 Plan* dated November 16, 2023. Doc. #26. No plan has been confirmed so far. The 60-month plan proposes the following terms:

1. Debtor's aggregate payment for months 1-5 will be \$1,504.00. Debtor's payments for months 6-60 will be \$799.00 per month.
2. Outstanding Attorney's fees in the amount of \$3,788.00 to be paid through the plan.
3. Secured creditors to be sorted into appropriate Classes and paid as follows:
  - a. 800 Loanmart (Class 2A, PMSI). \$21,136.00 at 9.00% to be paid at \$438.75 per month.
4. A dividend of 0% to unsecured creditors.

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

No party in interest has responded, and the defaults of all such parties in interest are entered.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and reference the plan by the date it was filed. The order shall clarify that the student loan debts shall not be discharged under 11 U.S.C. § 1328 at the conclusion of the plan absent further order from the court.

5. [23-12210](#)-B-13     **IN RE: ROBERT/LUCY GARIBAY**  
[RAS-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK,  
NATIONAL ASSOCIATION  
11-21-2023    [\[33\]](#)

U.S. BANK NATIONAL  
ASSOCIATION/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
FANNY WAN/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Overruled.

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

U.S. Bank National Association ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed by Robert and Lucy Garibay (collectively "Debtors") on October 2, 2023, under 11 U.S.C. § 1322(b)(5) on the following basis:

Debtor's Plan fails to provide for any outstanding arrears on Secured Creditor's pre-petition claim. Secured Creditor has filed its Proof of Claim, and Creditor's claim states pre-petition arrears in the amount of \$439.23. Debtor's Plan fails to meet the requirements of section 1325(a)(1) because it does not provide to promptly cure the entire outstanding balance of Creditor's arrearage claim as required by section 1322(b)(5).

Doc. #33. The plan lists Creditor (under the name PHH Mortgage Services) in Class 4. Doc. #3. On December 13, 2024, the court continued this matter to January 10, 2024, and directed

Debtors to either file a written response to the objection within 14 days prior to the hearing date, which Debtors timely did. Doc. #47.

In their Response, Debtors argue that the basis of the objection is that Creditor did not receive their October mortgage payment prior to the filing of the petition, and, furthermore, Debtors have made all subsequent payments but they have not been properly applied to Debtors' account, leading to an arrearage. *Id.* Debtors suggest that this can be resolved by an order from the court allowing Creditor to accept payments and credit Debtors' account. *Id.* Alternatively, Debtors are willing to move Creditor to Class One and pay Creditor through the plan, but in that case, Debtors request that the court order Creditor to return all funds paid by the Creditors to the Chapter 13 Trustee so that Creditor may properly receive 60 monthly payments through the plan to ensure its timely completion. *Id.*

The court is inclined to OVERRULE this objection. Leaving Creditor in Class 4 means upon confirmation, there will be no automatic stay if there is a default. If the Debtors want to modify the Plan, then they should file, serve, and seek confirmation of a modified Plan. The Debtors' suggestion that the court order a refund of monthly payments is improper in this context.

Nevertheless, this matter will be called as scheduled.

6. [18-14914](#)-B-13     **IN RE: MARIA AVILA**  
[MHM-2](#)

MOTION TO DISMISS CASE  
12-11-2023    [\[68\]](#)

NIMA VOKSHORI/ATTY. FOR DBT.

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

DISPOSITION:     Withdrawn.

NO ORDER REQUIRED

The chapter 13 trustee withdrew this motion on January 4, 2024. Doc. #75. Accordingly, this matter will be taken off calendar pursuant to the trustee's withdrawal.



7. [23-12028](#)-B-13     **IN RE: JACQUELINE KEENEY**  
[KLG-1](#)

MOTION TO CONFIRM PLAN  
11-30-2023    [\[41\]](#)

JACQUELINE KEENEY/MV  
ARETE KOSTOPOULOS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

On November 30, 2023, Jaqueline Keeney ("Debtor") moved for an order confirming the *First Amended Chapter 13 Plan* dated November 30, 2023. Doc. #44. On December 11, 2023, Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation. Doc. #47. On December 19, 2023, Debtor filed her *Second Amended Chapter 13 Plan*. Doc. #53. Accordingly, this motion is DENIED AS MOOT.

8. [23-10243](#)-B-13     **IN RE: JAMES/REYNA SALAS**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-5-2023    [\[47\]](#)

JEFFREY ROWE/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:        Denied as moot.

No order is required.

The chapter 13 trustee asks the court to dismiss this case for unreasonable delay by James Blanco and Reyna Q. Salas ("Debtors") that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and for failure to complete the terms of the confirmed plan (11 U.S.C. § 1307(c)(6)). Doc. #47.

On January 8, 2024, the Debtors filed a *Motion for Voluntary Dismissal* of this case. Doc. #57. Accordingly, the Trustee's motion is DENIED as moot.

9. [23-12047](#)-B-13     **IN RE: ADANAN/HUDA BATH**  
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR  
CREDIT CORPORATION  
10-25-2023    [\[23\]](#)

TOYOTA MOTOR CREDIT  
CORPORATION/MV  
PETER BUNTING/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:        Overruled.

ORDER:                The court will issue an order.

Toyota Motor Credit Corporation d/b/a Lexus Financial Services ("Creditor") objects to confirmation of the Chapter 13 Plan filed by Adanan Amar and Huda Naz Bath (collectively "Debtors") on September 14, 2023, on the following basis:

1. Debtors' proposed plan fails to provide treatment for Creditor's claim in the amount of \$40,567.93 with a 4.69% interest rate secured by a 2022 LEXUS IS500.
2. If the plan is amended to provide such treatment, it is nevertheless not feasible as proposed.

Doc. #23. On November 16, 2023, the court continued this matter to December 20, 2023, and directed Debtors to respond no later than 14 days before the hearing date. Doc. #31.

On December 5, 2023, Debtors filed a response stating that counsel for Debtors and Creditor have verbally agreed that Creditor's claim shall be treated under the plan as Class 3, surrender, and that the vehicle (which Debtors aver is in the possession of and payments made by their daughter) will not be repossessed unless payments are not kept current or comprehensive insurance naming Creditor as loss payee is not in force. Doc. #39.

On December 20, 2023, the court entered an order continuing this matter to January 10, 2024, stating "while the court will customarily accept the representations of Debtor's counsel to the court, in the absence of a statement by Toyota formally withdrawing, this matter proceeded as scheduled." Doc. #56.

On December 27, 2023, a Status Report was filed in this case, jointly signed by the case trustee, counsel for Creditor, and counsel for Debtors, averring *inter alia* that the Creditor's claim would be reclassified as a Class 3 claim, consistent with Debtors' prior representations. Doc. #61.

Accordingly, this Objection is OVERRULED.

10. [23-12047](#)-B-13     **IN RE: ADANAN/HUDA BATH**  
[PBB-2](#)

MOTION TO VALUE COLLATERAL OF TRUIST BANK SERVICE FIANCE  
CO., LLC  
12-8-2023    [\[43\]](#)

HUDA BATH/MV  
PETER BUNTING/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.

Adanan and Huda Bath (collectively "Debtors") move under 11 U.S.C. § 506(a) for an order valuing collateral identified as "a circuit breaker and copper wire" (the "Collateral") at \$500.00. Doc. #48. The Collateral is encumbered by a purchase money security interest in favor of Trust Bank ("Creditor") which secures a loan incurred on February 7, 2022. Doc. #43. According to the proof of claim, the amount owing on the loan is in the amount of \$8,248.82, and the Collateral is identified simply as "electrical equipment." Proof of Claim No. 12-1.

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

No party in interest timely filed written opposition, and the defaults of all nonmoving parties will be entered.

11 U.S.C. § 1325(a)(\*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) that collateral is personal property other than a motor vehicle acquired for the personal use of the debtor, and (3) the debt was incurred within one year preceding the filing of the petition.

Here, the motion itself expressly identifies the debt at issue as a "purchase money loan which was incurred on February 7, 2022." Doc. #43, ¶3. Likewise, the Declaration of Debtor Adanan Bath identifies the Collateral as securing Debtors financial obligation to Creditor pursuant to a purchase agreement entered into on February 7, 2022. Doc. #50. A copy of the agreement itself is not included in any or the moving papers, nor is it attached to the proof of claim, and so the court has no reason to doubt that Creditor's interest is a purchase money security interest.

The petition was filed on September 14, 2023, which is 584 days after the purchase money security interest was incurred, well in excess of one year. Because the debt was a purchase money security interest debt incurred more than one year prior to filing, Debtors satisfy the requirements of the hanging paragraph.

Accordingly, this motion is GRANTED.

11. [23-12047](#)-B-13      **IN RE: ADANAN/HUDA BATH**  
[PBB-3](#)

MOTION TO VALUE COLLATERAL OF VOLVO FINANCIAL SERVICES  
12-8-2023    [\[48\]](#)

HUDA BATH/MV  
PETER BUNTING/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.

Adanan and Huda Bath (collectively "Debtors") move under 11 U.S.C. § 506(a) for an order valuing a 2018 Freightliner Cascadia ("the Vehicle") with 675,000 miles at \$48,000.00. Doc. #48. Vehicle is encumbered by a purchase money security interest in favor of Volvo Financial Services ("Creditor") in the amount of \$62,593.58. *Id.*; cf. Proof of Claim No. 15-1.

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

No party in interest timely filed written opposition, and the defaults of all nonmoving parties will be entered. Nevertheless, for the reasons outlined below, this motion will be DENIED.

11 U.S.C. § 1325(a)(\*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) the debt was incurred within 910 days preceding the filing of the petition, and (3) the collateral is a motor vehicle acquired for the personal use of the debtor.

Here, the motion itself expressly identifies the debt at issue as a "purchase money loan which was incurred on August 24, 2021." Doc. #48, ¶7. Likewise, the Declaration of Debtor Adanan Bath identifies the Vehicle as securing Debtors financial obligation to Creditor pursuant to a purchase agreement entered into on August 24, 2021. Doc. #50. A copy of the agreement itself is not included in any or the moving papers, nor is it attached to the proof of claim, and so the court has no reason to doubt that Creditor's interest is a purchase money security interest.

The petition was filed on September 14, 2023, which is only 751 days after the purchase money security interest was incurred. The debt was a purchase money security interest debt incurred within 910 days of filing. But the personal property is a work vehicle - a Freightliner - not something for the Debtor's personal or household use. Hence, the "hanging paragraph" does not apply. Applying sec. 506 (a)(2), there is uncontroverted evidence that the replacement value is \$48,000.00. See, *Enewally v. Washington Mutual Bank (In re Enewally)*, 368 F. 3d 1165 (9th Cir., 2004).

The motion is GRANTED.

12. [22-12149](#)-B-13     **IN RE: BEVERLY TAYLOR**  
[WLG-6](#)

MOTION TO MODIFY PLAN  
12-1-2023    [\[105\]](#)

BEVERLY TAYLOR/MV  
MICHAEL REID/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.

Beverly Taylor ("Debtor") seeks an order confirming the *First Modified Chapter 13 Plan* dated December 1, 2023. Doc. #109. Debtor's prior plan, dated December 19, 2022, was confirmed on March 10, 2023. Doc. #18. Debtor has attempted to modify her plan repeatedly since without success, and so the original plan is still operative. *See docket generally.*

The modified 60-month plan currently under consideration proposes the following terms:

1. Debtor's aggregate payment for months 1-11 will be \$1,892.82. Debtor's payments for months 12-60 will be \$2,755.00 per month.
2. The Trustee will pay PG&E, which is included among the non-priority general unsecured creditors, in the amount of \$2,901.23 to the address provided in the plan. All unsecured creditors to be paid 100%.
3. Secured creditors to be sorted into appropriate Classes and paid as follows:
  - a. PHH Mortgage Services (Class 1, mortgage). \$32,041.00 in arrears at 0.00% to be provided for as follows: \$239.35 for the first 11 months and \$600.17 for the remaining 49 months. Post-petition mortgage payments shall be made through the conduit program. All missed payments to the Class 1 mortgage holder (PHH Mortgage) shall be paid in full by month 60. Post-petition mortgage fees and expenses claimed by conduit creditor PHH Mortgage of \$900.00 to be paid in full on a pro rata basis after the monthly dividends payable on account of class 1 arrearage claims, the Class 2 claims, and any executory contract and unexpired lease arrearage claims.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). 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 reference the plan by the date it was filed.

13. [23-11050](#)-B-13     **IN RE: CHRISTOPHER ISAIS**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-6-2023    [\[25\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Unless the trustee's motion is withdrawn at the hearing the court intends to grant the motion to dismiss on the grounds stated in the motion.

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

The chapter 13 trustee asks the court to dismiss this case for unreasonable delay by Christopher Gary Isais ("Debtor") that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and 11 U.S.C. § 1307(c)(4) Debtor's failure to commence making plan payments. Doc. #25.

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

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

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

Here, Debtor is delinquent in the amount of \$799.00. Doc. #27. Before this hearing, another payment in the same amount will also come due, resulting in a total delinquency of \$1,598.00. *Id.*

Debtor filed opposition on December 28, 2023, but it was neither timely filed by December 27, 2023, nor supported by admissible evidence. Doc. #29. No certificate of service has been filed. The opposition states Debtor's attorney has been informed by Debtor that he will bring the plan payments current by the time of this hearing. That is hearsay and unpersuasive.

The trustee has reviewed the schedules and determined that the Debtor's assets are over encumbered and are of no benefit to the estate. Because there is no equity to be realized for the benefit of the estate, dismissal is in the best interests of creditors and the estate. Doc. #25.

This matter will be called and proceed as scheduled to inquire whether Debtor is current on payments under the plan. If so, this motion will be DENIED WITHOUT PREJUDICE. If not, this motion may be GRANTED, and the case dismissed.

14. [23-11452](#)-B-13     **IN RE: TANNIA ESQUIVEL**  
[ALG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-22-2023    [\[35\]](#)

SHARON WRIGHT/MV  
PETER BUNTING/ATTY. FOR DBT.  
ARNOLD GRAFF/ATTY. FOR MV.

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

DISPOSITION:                 Granted

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

Patrick Carney, Trustee of the P. Carney 2021 Revocable Trust, as to a 97,500/195,000 interest; and Sharon S. Wright, Trustee of the Wright 2006 Family Trust, as to a 97,500/195,000 interest



(hereinafter "Movant") seeks an order declaring that no stay is in effect as to certain property located at 649 King Street, Parlier, California 93648 (the "Property") arising from this bankruptcy proceeding or, alternatively, that the automatic stay be lifted. Docs. ##35, 49 (the latter document corrects the name of trustee Patrick Carney, which was inaccurately listed as J. Michael Carney on the original motion). Tannia Esquivel ("Debtor") did not oppose. Finding that no stay exists as to the Property, this motion is 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 any party in interest, including but not limited to the creditors, the debtor, the U.S. Trustee, or any other party in interest, to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

No party in interest has filed a response, and so the defaults of all such parties are entered.

While Movant presents extensive arguments for why the automatic stay should be lifted, the court finds instead that there is simply no stay in effect at all as to this Debtor and this Property. In Debtor's *Chapter 13 Plan*, filed July 10, 2023, and confirmed September 20, 2023, Debtor lists the Property in Class 4 and states that all payments on this claim are to be made by "Churo, LLC." Doc. #9. Class 4 claims are secured claims paid outside the plan, and Debtor's plan contains conspicuous language stating that the automatic stay is "modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any non-debtor in the event of a default under applicable law or contract[.]" *Id.* *See In re Boudreaux*, No. 12-10813-B-13, 2012 Bankr. LEXIS 6176, at \*3 (Bankr. E.D. Cal. June 20, 2012) ("Once the Plan is confirmed, the automatic stay will terminate with regard to the Class 4 claims and [the Creditor] will be free to enforce its non-bankruptcy remedies under the Note and Deed of Trust in the event of a post-petition default.")

Here, the plan was confirmed, and the automatic stay ceased to be in effect as to Debtor's Class 4 claims. Accordingly, the court finds that the automatic stay as triggered by the filing of Debtor's case is not in effect as to the Property. This motion is GRANTED.

15. [23-11452](#)-B-13     **IN RE: TANNIA ESQUIVEL**  
[ALG-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-22-2023    [\[42\]](#)

VICTORIA ELLECAMP/MV  
PETER BUNTING/ATTY. FOR DBT.  
ARNOLD GRAFF/ATTY. FOR MV.

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

DISPOSITION:                    Granted

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

Daniel Ellecamp and Victoria Ellecamp (hereinafter "Movants") seek an order declaring that no stay is in effect as to certain property located at 13565 E. Young Avenue, Parlier, California 9364 (the "Property") arising from this bankruptcy proceeding or, alternatively, that the automatic stay be lifted. Doc. #42. Tannia Esquivel ("Debtor") did not oppose. Finding that no stay exists as to the Property, this motion is 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 any party in interest, including but not limited to the creditors, the debtor, the U.S. Trustee, or any other party in interest, to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

No party in interest has filed a response, and so the defaults of all such parties are entered.

While Movant presents extensive arguments for why the automatic stay should be lifted, the court finds instead that there is simply no stay in effect at all as to this Debtor and this Property. In Debtor's *Chapter 13 Plan*, filed July 10, 2023, and confirmed September 20, 2023, Debtor lists the Property in Class 4 and states that all payments on this claim are to be made by "Churo, LLC." Doc. #9. Class 4 claims are secured claims paid outside the plan, and Debtor's plan contains conspicuous language stating that the automatic stay is "modified to allow the holder of a Class 4 secured

claim to exercise its rights against its collateral and any non-debtor in the event of a default under applicable law or contract[.]” *Id. See In re Boudreaux*, No. 12-10813-B-13, 2012 Bankr. LEXIS 6176, at \*3 (Bankr. E.D. Cal. June 20, 2012) (“Once the Plan is confirmed, the automatic stay will terminate with regard to the Class 4 claims and [the Creditor] will be free to enforce its non-bankruptcy remedies under the Note and Deed of Trust in the event of a post-petition default.”)

Here, the plan was confirmed, and the automatic stay ceased to be in effect as to Debtor’s Class 4 claims. Accordingly, the court finds that the automatic stay as triggered by the filing of Debtor’s case is not in effect as to the Property. This motion is GRANTED.

16. [23-12457](#)-B-13     **IN RE: NICOLAS/SAMANTHA CORREA**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
12-12-2023    [\[17\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:                    Withdrawn

No order is required.

On January 3, 2024, the Trustee withdrew the *Objection to Confirmation*. Doc. #26. Accordingly, this *Objection* is WITHDRAWN.

17. [21-10061](#)-B-13     **IN RE: JACINTO/KAREN FRONTERAS**  
[MHM-3](#)

MOTION TO RECONVERT CASE FROM CHAPTER 13 TO CHAPTER 7  
12-6-2023    [\[184\]](#)

GLEN GATES/ATTY. FOR DBT.  
MICHAEL MEYER/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:                    Denied as moot.

No order is required.

Michael H. Meyer moves to reconvert this Chapter 13 case back to one under Chapter 7 on the grounds that debtors Jacinto and Karen Fronteras (“Debtors”) are delinquent in plan payments in the amount of \$9,313.59 as of December 6, 2023, with additional payments accruing. Doc. #184.

On January 8, 2024, Debtors filed their *Second Modified Chapter 13 Plan*. Accordingly, this motion is DENIED as moot.

18. [23-11268](#)-B-13     **IN RE: MELISSA JOHNSON**  
[DAB-3](#)

MOTION TO CONFIRM PLAN  
11-21-2023    [\[48\]](#)

MELISSA JOHNSON/MV  
DAVID BOONE/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:        Continued to February 14, 2024, at 9:30 a.m.

ORDER:                The court will issue an order.

Melissa Johnson ("Debtor") moves for an order confirming the *Second Modified Chapter 13 Plan* dated November 21, 2023. Doc. #50.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation of the plan under 11 U.S.C. §§ 1325(a)(1) and (a)(6) and §§ 1322(a) and (d) because:

1. The plan erroneously lists creditor Technology Credit Union as a Class 4 creditor when it should properly be a Class 2 creditor;
2. The plan improperly reclassifies creditor LoanCare LLC from Class 4 to Class 1. The plan payments are short by \$2,151.84 per month for months 1-5 and by \$1.84 per month beginning in month 6. Debtor has not yet provided a Class 1 Checklist to the Trustee;
3. The plan takes more than 60 months to fund; and
4. The plan is not feasible as it calls for payments of \$2,300.00 per month beginning in month 6 when Schedule J reflects that Debtor's net monthly income is only \$150.04.

Doc. #50.

This motion to confirm plan will be CONTINUED to February 14, 2024, at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's and Creditor's objections to confirmation are withdrawn, the Debtor shall file and serve a written response to the objections no later than **fourteen (14) days** before the continued hearing date. The response shall specifically address each issue raised in the objection(s) to confirmation, state whether each issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee shall file and serve a reply, if any, no later than **seven (7) days** prior to the hearing date.

If the Debtor elects to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than **seven (7)**

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

19. [23-12268](#)-B-13     **IN RE: GREGORY GIANNOCCARO**  
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE  
MICHAEL H. MEYER  
11-15-2023    [[12](#)]

DAVID BOONE/ATTY. FOR DBT.  
DISMISSED 12/21/23

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

DISPOSITION:        Overruled as moot.

ORDER:                The court will issue an order.

This case was dismissed on December 21, 2023. Doc. #35. Accordingly, this Objection is OVERRULED as moot

20. [23-12271](#)-B-13     **IN RE: RODNEY TIMMONS**  
[MHM-2](#)

MOTION TO DISMISS CASE  
12-4-2023    [[27](#)]

ADELE SCHNEIDEREIT/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 January 2, 2024. Doc. #58. Accordingly, this matter will be taken off calendar pursuant to the trustee's withdrawal.

21. [19-13074](#)-B-13     **IN RE: KEVIN/DORIS WILLIAMS**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-4-2023    [\[47\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:     Withdrawn.

NO ORDER REQUIRED

The chapter 13 trustee withdrew this motion on January 3, 2024.  
Doc. #55. Accordingly, this matter will be taken off calendar  
pursuant to the trustee's withdrawal.

22. [23-10075](#)-B-13     **IN RE: REFUJIO GUILLEN**  
[JRL-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-20-2023    [\[226\]](#)

BETTY HOLTSNIDER/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
CHINONYE UGORJI/ATTY. FOR MV.

NO RULING.

23. [23-10075](#)-B-13     **IN RE: REFUJIO GUILLEN**  
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE  
8-15-2023    [\[121\]](#)

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

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:     Granted or denied

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

Michael H. Meyer ("Trustee") moves for dismissal of this case for  
(1) unreasonable delay that is prejudicial to creditors, and (2)  
failure to confirm a Chapter 13 plan. Doc. #121. Refugio Guillen  
("Debtor") timely responded, arguing that a confirmable Chapter 13

plan had been filed and that all the obstacles to confirmation had been or soon would be resolved. Doc. #160.

Debtor's *Third Modified Chapter 13 Plan* was filed on December 6, 2023, and is presently before the court on a *Motion for Confirmation*. See Item #24, below.

If the court grants the *Motion to Confirm*, the instant motion will be DENIED. If the court denies the *Motion to Confirm*, the court may GRANT this *Motion to Dismiss* according to the results of the confirmation hearing.

24. [23-10075](#)-B-13      **IN RE: REFUJIO GUILLEN**  
[RSW-9](#)

MOTION TO CONFIRM PLAN  
12-6-2023    [\[208\]](#)

REFUJIO GUILLEN/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted or denied

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

Refugio Guillen ("Debtor") seeks an order confirming the *Third Modified Chapter 13 Plan* dated December 6, 2023. Doc. #213. No plan has been confirmed so far. The 49-month plan proposes the following terms:

1. Debtor's aggregate payment for months 1-4 will be \$5,000.00 per month. Debtor's payments for months 5-49 will be \$6,090.27 per month.
2. Debtor's attorney was paid \$4,000.00 prior to filing and will be paid \$0.00 in outstanding fees through the plan.
3. Secured creditors to be sorted into appropriate Classes and paid as follows:
  - a. Chase Auto Finance (Class 2A, PMSI). \$38,591.24 at 3.40% to be paid at \$913.37 per month. Secured by a 2021 GMC Yukon.
  - b. The People of the State of California (Class 2B, real property (acquired title)). Creditor's claim: \$2,044,892.98. Value of Creditor's interest: \$182,008.48 at 5.00%. Monthly dividend of \$4,636.50.
  - c. US Bank (Class 3). 2021 GMC Sierra to be surrendered.
  - d. Karpe Real Estate Center (Class 4, 3939 Green Hills Street, Bakersfield, CA) \$2,692.39 per month to be paid by Debtor.
  - e. Wells Fargo Home Mortgage (2419 Kaibab Ave., Bakersfield, CA) \$888.41 to be paid by Debtor.

4. A dividend of 1.7% to unsecured creditors on claims totaling approximately \$1,862,884.50.
  - a. Per Section 7.02, Debtor will pay no less than \$32,000.00 to unsecured creditors.
  - b. Per Section 7.03, Debtor will pay for the benefit of unsecured creditors "any and all amounts received by the Debtor from the real property at 904 Knotts Ave., Bakersfield, CA, if any, in addition to the \$10,000.00 already provided for."
  - c. Per Section 7.04, "unsecured creditors shall be paid any and all amounts, over and above the \$11,000.00 already being paid in the plan, received by the Debtor from his 50% interest in the real property in Tulare County, CA, if any."

On December 11, 2023, Michael H. Meyer ("Trustee") objected to this plan on the following grounds:

1. The plan is short \$999.86 per month for months 1-4.
2. The special provisions contained in Sections 7.03 and 7.04 are unclear.
3. The plan is not feasible because Debtor's monthly income is \$5,015.27 per his most recent Schedule J, but the plan calls for payments of \$5,090.27 beginning in month 5. Also, the plan payments are delinquent by \$6,541.60 as of December 11, 2023.

Doc. #216.

On December 18, 2023, Debtor responded to the Trustee's *Objection* stating that Debtor has since filed Amended Schedules A/B, I and J and also updated pay advices which reflect an increase in income beginning in May of 2023, which Debtor argues should alleviate the Trustee's feasibility concerns. Doc. #220. Debtor also provides additional context for the intended meaning of Sections 7.03 and 7.04. *Id.* Debtor concedes that he must bring his plan payments current prior to confirmation. *Id.*

In addition to the Trustee's *Objection*, the People of California filed a *Conditional Non-Opposition* stating that the People would not oppose confirmation if certain requirements were met, including: (1) immediate relief from the automatic stay for the People to prosecute an action for violation of the Uniform Voidable Transfers Act in Superior Court of the State of California, County of Kern, Case No. BCV-22-102417 ("the Civil Action"); Debtors consent to judgment in the Civil Action, to be accomplished by a separate pleading to be filed in the Kern County Superior Court; and (3) Debtor's assignment of all rights and interest in the property identified as 44919 Deer Creek Mill Road, California Hot Springs, California. Doc. #224.

Debtor filed a *Response* to the People's *Non-Objection* stating that he agreed with all the provisions requested therein and that he would work together with the People to finalize an agreement amenable to Debtor, the People, and the Trustee to be presented to the court later. Doc. #233. As of the current date, no such agreement has been presented to the court.



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

The Trustee has registered opposition to confirmation, and the People have registered a conditional non-opposition. Debtor has responded to both of those parties and has purportedly resolved their concerns and conditions. This matter will proceed as scheduled to determine on the record whether the Trustee and the People are indeed satisfied with the proposed modifications. If so, the court is inclined to GRANT the motion to confirm plan. If not, the court may deny the motion or continue the matter to afford the parties further time to resolve their differences.

25. [23-11676](#)-B-13     **IN RE: KATHERINE J SCONIERS STANPHILL**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-5-2023    [\[51\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION:                    Granted.

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

The chapter 13 trustee asks the court to dismiss this case for unreasonable delay by Katherine J. Sconiers Stanphill ("Debtor") that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and for failure to complete the terms of the confirmed plan (11 U.S.C. § 1307(c)(6)). Doc. #51. Debtor did not oppose.

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

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

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

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

Here, Debtor is delinquent in the amount of \$4,955.56. Doc. #51. Before this hearing, another payment in the amount of 2,516.31 will also come due, resulting in a total delinquency of \$7,471.87. *Id.*

The trustee has reviewed the schedules and determined that this case has a liquidation value of \$2,169.75 after trustee compensation if the case were converted to chapter 7. Doc. #53. This amount is comprised of the value of Debtor's cash on hand and money in attorney trust account. *Id.* The liquidation value of this case is de minimis. Therefore, dismissal, rather than conversion, serves the interests of creditors and the estate.

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

26. [23-12278](#)-B-13     **IN RE: MATTHEW QUALLS**  
[SDS-2](#)

MOTION TO CONFIRM PLAN  
12-1-2023    [\[34\]](#)

MATTHEW QUALLS/MV  
SUSAN SILVEIRA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:        Denied.

ORDER:                The court will issue an order.

Matthew R. Qualls ("Debtor") moved for confirmation of his Second Amended Chapter 13 plan dated December 1, 2023. Doc. #34. Michael H. Meyer ("Trustee") timely objected on the grounds that the plan does not provide for all Debtor's projected disposable income to be applied to unsecured creditors under the plan as required by 11 U.S.C. § 1325(b)(1)(B). Doc. #41. Specifically, Trustee points to several errors in Debtor's For 122C-2. *Id.*

On January 3, 2024, Debtor filed a somewhat terse reply to the Trustee's Objection, stating in its entirety: "Without addressing the merits of the Chapter 13 Trustee's Opposition to Confirmation of Chapter 13 Plan filed on December 11, 2023, the Debtor does not oppose this objection." Doc. #55.

Accordingly, in light of Debtor's non-opposition, the Trustee's Objection is SUSTAINED, and this *Motion to Confirm* is DENIED.

27. [23-12478](#)-B-13     **IN RE: ZACARE BURRIS AND AMY RABAGO-BURRIS**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
12-7-2023    [\[16\]](#)

MICHAEL MEYER/MV  
STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION:        Overruled as moot.

No order is required.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to claim of exemptions made by Zacare Burris and Amy Rabago-Burris ("Zacare," "Amy," or collectively "Debtors") with regard to a "Square for Business" account in the amount of \$500.00 and a "Venmo" account in the amount of \$300.00, both under C.C.P. 704.220, and also various personal items purportedly used in Debtors' businesses under C.C.P. § 704.060. Doc. 16; see Doc. #1 (*Sched. C*).

On January 8, 2024, the Debtors filed an *Amended Schedule C*. Accordingly, this *Objection* is OVERRULED AS MOOT.

28. [23-12478](#)-B-13     **IN RE: ZACARE BURRIS AND AMY RABAGO-BURRIS**  
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
12-8-2023    [[13](#)]

STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION:                    Overruled as moot.

No order is required.

On December 8, 2023, Michael H. Meyer filed the instant *Objection to Confirmation* of Debtors' Chapter 13 plan filed on November 3, 2023. Doc. #13.

On January 2, 2024, Zacare Burris and Amy Rabago-Burris ("Debtors") filed their *First Modified Chapter 13 Plan*. Doc. #23. Accordingly, this *Objection* is OVERRULED AS MOOT.

29. [18-13681](#)-B-13     **IN RE: ARTURO/ELIZABETH ESPINOSA**  
[MHM-2](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE  
3002.1  
11-28-2023    [[104](#)]

MICHAEL MEYER/MV  
THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION:                    Granted.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") moves for an order determining: (1) Arturo and Elizabeth Espinosa ("Debtors") have cured the pre-petition default with respect to the promissory note dated May 2, 2007 and secured by a deed of trust on real property located at 36973 Franklin Ave., Madera, CA 93636 ("the Property") in favor of ABS REO Trust VI, its assignees and/or successors, by and through its servicing agent ("the Creditor"), and (2) that all post-petition payments due and owing as of October 2018 through September 2023 have been paid. Doc. #104.

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

No responses have been filed, and the defaults of all non-responding parties in interest are entered.

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

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

Rule 3002.1(h) provides, on motion by the trustee filed within 21 days after service of the statement under subdivision (g), the court shall, after notice and a hearing, determine whether the debtor has cured the default and paid all required post-petition amounts. Trustee filed a *Notice of Final Cure Payment* pursuant to Rule 3002.1(f) on January 21, 2022. Doc. #87. Creditor did not provide Trustee with a Rule 3002.1(g) response. Since no response was filed, Trustee filed this motion. Doc. #93.

The record reflects that Debtors' Chapter 13 plan provided for payments to the original mortgage holder, Bank of America, N.A. ("BOA") and that Trustee made all payments required under the plan to BOA both for the ongoing mortgage and to cure the prepetition arrearage. Doc. #106. On or about March 4, 2019, the claim was transferred from BOA to Creditor. *Id.* Trustee avers that the final plan payment was received on September 27, 2023, and Trustee filed a Notice of Final Cure ("Notice") pursuant to Rule 3002.1(h) on October 23, 2023. *Id.* On November 13, 2023, Creditor responded, stating that the total unpaid post-petition payments equal \$1,754.37. This purportedly includes \$3,442.88 in unpaid mortgage payments that became due beginning on September 25, 2023, less the

suspense account of \$1,688.51. *Id.* Trustee attributes this discrepancy to a bookkeeping error by Creditor and notes that Creditor's response was not accompanied by an accounting of amounts allocated to the suspense amount. *Id.* Finally, Trustee submits its own ledger that confirms payments made to Creditor through September 29, 2023. Doc. #107.

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

30. [23-11281](#)-B-13     **IN RE: SARAH FLORES GARZA**  
[JBC-3](#)

MOTION TO CONFIRM PLAN  
11-29-2023    [\[60\]](#)

SARAH FLORES GARZA/MV  
JAMES CANALEZ/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.

Sarah Flores Garza ("Debtor") seeks an order confirming the *Third Modified Chapter 13 Plan* dated November 15, 2023. Doc. #59. No plan has been confirmed so far. The 60-month plan proposes the following terms:

1. Debtor's aggregate payment will be \$3,705.00 per month.
2. Outstanding Attorney's fees in the amount of \$2,000.00 to be paid through the plan.
3. Secured creditors to be sorted into appropriate Classes and paid as follows:
  - a. Select Portfolio Servicing (Class 1, Mortgage on residence). \$74,370.58 in arrears at 0.00% to be paid at \$1,582.35 per month. On-going post-petition mortgage dividend to be paid at \$1,723.98 per month.
  - b. Les Schwab Tire Center (Class 2(A), PMIS). \$501.25 at 6.00% to be paid at \$22.22 per month.
  - c. Golden 1 Credit Union (Class 4, Vehicle of non-filing spouse.) \$1,617.00 per month to be paid by non-filing spouse.
  - d. Honda Financial Services (Class 4, Vehicle leased by non-filing spouse.) \$380.05 per month to be paid by Debtor.
4. A dividend of 100% to unsecured creditors.

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

No party in interest has responded, and the defaults of all such parties in interest shall be entered.

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

31. [23-11981](#)-B-13     **IN RE: SHIMEKA CONWAY**  
[TCS-2](#)

MOTION TO CONFIRM PLAN  
12-7-2023    [\[57\]](#)

SHIMEKA CONWAY/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
OST 12/8/23

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Granted.

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

Shimeka Conway ("Debtor") seeks an order confirming the *Second Modified Chapter 13 Plan* dated December 7, 2023. Doc. #62. No plan has been confirmed so far. The 60-month plan proposes the following terms:

1. Debtor's aggregate payment shall be \$1,210.00 per month for months 1-2 and \$2,105.00 for months 3-60.
2. Subject to court approval, outstanding Attorney's fees in the amount of \$18,288.00 to be paid through the plan.
3. Secured creditors to be sorted into appropriate Classes and paid as follows:
  - a. Wyndham Vacation Ownership (Class 3, Surrender).  
Estimated deficiency \$9,983.00.

4. A dividend of 31% to unsecured creditors.

This motion was set for hearing on less than 35 days' notice as normally be required by Local Rule of Practice ("LBR") 3015-1(d)(1). Counsel for Debtor filed a *Motion to Shorten Time*, which this court granted in an order dated December 8, 2023. Docs. #53, 63. That motion was accompanied by a Declaration signed by an employee of the Law Offices of Timothy C. Springer (counsel for Debtor) and averring that she "set out to serve the Modified Plan on December 2, 2023" but that medical issues with her daughter caused her to miss five days of work. Doc. #54. The Declaration is silent as to why no other employee of the Springer firm could step in and file the motion and supporting documents in a timely manner.

Because the motion was filed on less than 35 days' notice, this matter will be called as scheduled. No written responses are required.

If there is no opposition presented at the hearing, the court is inclined to GRANT this motion. The confirmation order shall include the docket control number of the motion and reference the plan by the date it was filed.

32. [22-10798](#)-B-13     **IN RE: HILARIA MORALES**  
[TCS-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF TIMOTHY C.  
SPRINGER FOR TIMOTHY C. SPRINGER, DEBTORS ATTORNEY(S)  
12-8-2023    [\[24\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

The Law Office of Timothy Springer ("Applicant"), attorney for Hilaria Morales ("Debtor"), requests interim compensation in the sum of \$5,200.00 under 11 U.S.C. §§ 330 and 331. Doc. #24. This amount consists of \$5,200.00 in fees and \$0.00 in expenses from May 7, 2022, through November 5, 2023. *Id.* This is Applicant's first fee application. *Id.*

Debtor executed a statement of consent dated December 5, 2023, indicating that Debtor has read the fee application and approves the same. *Id.* § 9(7).

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

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



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

Section 3.05 of the *Chapter 13 Plan* dated May 11, 2022, confirmed July 7, 2022, indicates that Applicant was paid \$212.00 prior to filing the case and additional fees of \$5,088.00 would be paid through the plan subject to court approval after by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Docs. #3, #14.

Applicant's firm provided 15.0 billable hours at the following rates, totaling **\$5,200.00** in fees:

Professional	Rate	Billed	Total
Nancy Klepac	\$400.00	6.7	\$2,680.00
Timothy Springer	\$400.00	5.1	\$2,040.00
Virginia Ellis	\$150.00	3.2	\$480.00
<b>Total</b>		<b>15</b>	<b>\$5,200.00</b>

Docs. ##24, 26. No expenses are sought in this motion.

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

Applicant's services here included, without limitation: Pre-petition consultation and fact gather; preparation of the petition and accompanying documents; independent verification of information; matters pertaining to drafting the plan, hearings, and objections; 341 preparation; claim administration and objections; fee applications; and case administration. Docs. ##24, 26. The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition.

Accordingly, this motion will be GRANTED. Applicant shall be awarded \$5,200.00 in fees as reasonable compensation for services rendered on a final basis under 11 U.S.C. § 331. The chapter 13 trustee will be authorized to pay Applicant \$5,200.00 through the confirmed plan for services from May 7, 2022, through November 5, 2023.

11:00 AM

1. [23-11537](#)-B-7     **IN RE: SAMANTHA SELMA**  
[23-1043](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
10-13-2023     [\[1\]](#)

SELMA V. UNITED STATES  
DEPARTMENT OF EDUCATION ET AL  
JEFFREY ROWE/ATTY. FOR PL.

NO RULING.

2. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[23-1024](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
5-11-2023     [\[1\]](#)

RUBIO V. MADERA COMMUNITY  
HOSPITAL  
EILEEN GOLDSMITH/ATTY. FOR PL.

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

DISPOSITION:                     Continued to April 24, 2024, at 11:00 a.m.

No order is required.

On January 5, 2024, the parties entered a *Stipulation* to stay proceedings pending mediation. Doc. #57. Accordingly, and under the terms of that order, this Status Conference is hereby CONTINUED to April 24, 2024 at 11:00 a.m.

3. [21-12473](#)-B-7     **IN RE: BLAIN FARMING CO., INC.**  
[23-1041](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
10-4-2023     [\[1\]](#)

SALVEN V. MECHANICS BANK  
GABRIEL WADDELL/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:                     Status conference is concluded.

ORDER:                             The court will issue the order.

The court is granting Plaintiff Trustee Salven's *Motion for Judgment on the Pleadings*. See item 4 below. Accordingly, there is no need

for further status or scheduling conferences in this Adversary Proceeding.

The court will issue an order concluding the status conference and removing the matter from calendar.

4. [21-12473](#)-B-7     **IN RE: BLAIN FARMING CO., INC.**  
[23-1041](#)     [FW-1](#)

MOTION FOR JUDGMENT ON THE PLEADINGS  
11-27-2023     [9]

SALVEN V. MECHANICS BANK  
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION:     Granted.

ORDER:             The minutes will be the court's findings and  
conclusions. Moving party to prepare order  
conforming to ruling below.

Plaintiff, Trustee James Salven, asks the court for a Judgment on the Pleadings under Civ. Rule 12 (c) (incorporated by Rule 7012(b)) on his complaint to set aside a Notice of Pendency of Action and Abstract of Judgment in favor of Defendant Mechanics Bank as preferential transfers. Mechanics Bank does not oppose the motion and its default shall be entered.

The motion will be GRANTED.

Trustee filed a complaint against Mechanics Bank pleading that Mechanics Bank's judgment entered in state court in August 2021 and the accompanying Abstract of Judgment and its Notice of Pendency of Action recorded one month earlier are preferences under 11 U.S.C. sec. 547.

The complaint alleges the necessary elements of a preferential transfer as to the Notice of Pendency of Action and the Judgment and Abstract of Judgment. The complaint alleges the Notice of Pendency and the Abstract were each recorded within 90 days of the filing (October 22, 2021); that each were a transfer; that the transfers were for the benefit of Mechanics Bank; the transfers were made while the Debtor was insolvent; the transfers enabled Mechanics Bank to receive more than other unsecured creditors had the transfers not been made and the Bank had received a distribution under Chapter 7. Doc. # 1.

Mechanics Bank's answer denied nothing but alleged it had no opposition to the relief provided any judgment against the Bank would avoid the transfers, the avoided transfers could be preserved for the bankruptcy estate, and the bank render its filed claim (Claim 15) unsecured. Doc. # 7.

Civil Rule 12 (c) permits "a party" to move for judgment on the pleadings. These motions are almost always filed by defendants. On plaintiff's motion, the allegations of the nonmoving party must be accepted as true, while the allegations of the moving party which have been denied are assumed to be false. *Doleman v. Meiji Mutual Life Ins. Co.*, 727 F. 2d 1480, 1482 (9th Cir. 1984) cited in *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F. 2d 1542, 1550 (9th Cir. 1989). Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law. *Id.*; *Carroll v. Bohrer (In re Bohrer)*, 628 B.R. 676, 681 (Bankr. S.D. Cal. 2021).

Plaintiff here has alleged the necessary elements of preferential transfers. The Defendant, Mechanics Bank, has not denied any allegations. So, there are no material issues of fact to be resolved. Judgment avoiding the preferences is appropriate. But Mechanics Bank has stated that it has no opposition to entry of a judgment avoiding the Notice of Pendency of Action and the Abstract of Judgment pled in the complaint and the preservation of the transfers for the benefit of the bankruptcy estate. Further Mechanics Bank has alleged that its proof of claim (Claim 15) can be deemed unsecured. No further relief has been authorized by Mechanics Bank.

In sum, and for the reasons stated, the Motion for Judgment on the Pleadings is GRANTED. A separate judgment can be entered avoiding the transfers pled in the complaint, preserving the transfers for the benefit of the estate, and deeming Mechanics Bank's proof of claim (Claim 15) unsecured.

5. [21-12473](#)-B-7 **IN RE: BLAIN FARMING CO., INC.**  
[23-1048](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
11-13-2023 [[1](#)]

SALVEN V. CITIZENS BUSINESS  
BANK ET AL  
GABRIEL WADDELL/ATTY. FOR PL.

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

DISPOSITION: Status conference concluded.

ORDER: The court will issue the order.

The parties stipulated (Doc. # 10) to a resolution of this Adversary Proceeding once all other parties have either been dismissed, judgment entered on the claim, or any appropriate claim bifurcated.

So, this status conference is concluded since there is nothing further to resolve in this proceeding. The status conference will be removed from calendar.

6. [23-10886](#)-B-7     **IN RE: LISA ANDERSON**  
[23-1031](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
7-21-2023     [\[1\]](#)

HAMILTON ET AL V. ANDERSON  
LEAH ZABEL/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

7. [23-10794](#)-B-7     **IN RE: HOMERO MENDIOLA**  
[23-1028](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
7-10-2023     [\[1\]](#)

EDMONDS V. MENDIOLA  
ANTHONY JOHNSTON/ATTY. FOR PL.

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

DISPOSITION:     Continued to February 28, 2024, at 11:00 a.m.

ORDER:     The court will issue the order.

Plaintiff, Trustee Irma Edmonds, has filed a Motion for an Order Approving Compromise of Controversy on January 3, 2024, relating to this Adversary Proceeding. (Main case Docs. ##24-28). The hearing on that motion is scheduled for February 13, 2024, at 1:30 p.m.

Accordingly, this status conference will be continued to February 28, 2024, at 11:00 a.m. Should the compromise motion be granted, this hearing will be removed from calendar and the status conference concluded unless there is a contingency in the settlement.