

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, January 12, 2023
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [22-11610](#)-A-13 **IN RE: JESSINA HUNTER**
[MHM-1](#)

CONTINUED RE: MOTION TO DISMISS CASE
11-17-2022 [[31](#)]

MICHAEL MEYER/MV
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was continued from a prior hearing held on December 15, 2022. Doc. #44. At that hearing, the court required the debtor to file and serve by not later than December 22, 2022, "a declaration explaining the actions the debtor took to obtain pre-petition credit counseling and her efforts to obtain a certificate evidencing the same." Id. The court also required the chapter 13 trustee to file and serve any further pleadings with respect to this motion by not later than January 5, 2023. Id. No additional pleadings with respect to this motion have been filed by either the debtor or the trustee.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). While not timely, the debtor filed a written response to the motion on December 13, 2022 (Doc. #37), which the court considered at the prior hearing on this motion.

As an informative matter, the certificate of service filed in connection with this motion to dismiss (Doc. #34) used an older version of the court's Official Certificate of Service form (EDC Form 7-005, New 09/2022) instead of the most updated version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

By this motion, the chapter 13 trustee ("Trustee") asks the court to dismiss this chapter 13 bankruptcy case filed by Jessina Marie Hunter ("Debtor") under 11 U.S.C. § 1307(c)(1) for unreasonable delay by Debtor that is prejudicial to creditors. Doc #31. Specifically, Trustee asks the court to dismiss this case for Debtor's failure to: (1) appear at the scheduled § 341 meeting of creditors; (2) provide Trustee with any requested documents; and (3) make all payments due under the plan. Doc. #31. In addition, Debtor failed to file complete and accurate schedules as required by 11 U.S.C. § 521 and/or Federal Rule of Bankruptcy Procedure 1007. Doc. #31. Further, Debtor has failed to file the correct form for Chapter 13 Plan as provided by the Local Rule 3015-1(a) Official Local Form EDC 3-080 (rev. 11/9/18) and General Order GO.18-03 Order Adopting Attached Chapter 13 Plan as Official Local Form EDC 3-080. Debtor filed her plan on the form required by the bankruptcy court for the Central District of California, not the form required by the Eastern District of California. Doc. #31. Finally, Debtor is ineligible to be a debtor in a Chapter 13 pursuant to 11 U.S.C. § 109(h) because Debtor failed to complete Credit Counseling Certificate timely. Doc. #31.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by Debtor that is prejudicial to creditors because Debtor has failed to appear at the scheduled § 341 meeting of creditors and has failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Cause also exists to dismiss this case as Debtor has failed to file complete and accurate schedules and has failed to use the correct form for the chapter 13 plan.

Moreover, under 11 U.S.C. § 109(h), an individual may not be a debtor unless the debtor received credit counseling within the 180-day period ending on the petition date. 11 U.S.C. § 109(h)(1). Debtor filed for relief under chapter 13 of the Bankruptcy Code on September 19, 2022. Doc. #1. The Bankruptcy Code allows the debtor to request a waiver of the requirement under § 109(h)(1) to receive credit counseling pre-petition based on exigent circumstances. 11 U.S.C. § 109(h)(3)(A). While Debtor asserted at the December 15, 2022 hearing that Debtor received pre-petition credit counseling but did not received a certificate showing such, Debtor did not file the declaration as ordered by the court to support that assertion. Because Debtor did not receive credit counseling prior to filing her bankruptcy petition and has not received a waiver of that requirement, Debtor may not be a chapter 13 debtor pursuant to § 109(h).

While there appears to be significant non-exempt property that could be used to pay creditors, because Debtor has not filed a credit counseling certificate, Debtor is not eligible to be a chapter 7 debtor pursuant to § 109(h), and dismissal rather than conversion is appropriate.

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

2. [18-13311](#)-A-13 **IN RE: MELINDA MARTINDALE**
[DMG-5](#)

MOTION TO MODIFY PLAN
12-8-2022 [\[168\]](#)

MELINDA MARTINDALE/MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

3. [22-11912](#)-A-13 **IN RE: ELIZABETH DAVIS**
[ASW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-29-2022 [[17](#)]

THE BANK OF NEW YORK MELLON/MV
DANIEL FUJIMOTO/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on January 9, 2023. Doc. #31.
Therefore, this motion will be DENIED AS MOOT.

4. [22-11816](#)-A-13 **IN RE: CESAR PENA BANDA AND SILVIA PENA**
[CJK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
12-20-2022 [[44](#)]

DEUTSCHE BANK NATIONAL TRUST COMPANY/MV
ZISHAN LOKHANDWALA/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

The court is granting the trustee's Motion to Dismiss [MHM-2], calendar matter #6 below, therefore this Objection to Confirmation of the Plan [CJK-1] will be OVERRULED AS MOOT.

5. [22-11816](#)-A-13 **IN RE: CESAR PENA BANDA AND SILVIA PENA**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-1-2022 [[37](#)]

MICHAEL MEYER/MV
ZISHAN LOKHANDWALA/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

The court is granting the trustee's Motion to Dismiss [MHM-2], calendar matter #6 below, therefore this Objection to Debtor's Claim of Exemptions [MHM-1] will be OVERRULED AS MOOT.

6. [22-11816](#)-A-13 **IN RE: CESAR PENA BANDA AND SILVIA PENA**
[MHM-2](#)

MOTION TO DISMISS CASE
12-15-2022 [\[40\]](#)

MICHAEL MEYER/MV
ZISHAN LOKHANDWALA/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the 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). 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 debtors are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtors that is prejudicial to creditors. Doc #40. Specifically, Trustee asks the court to dismiss this case for the debtors' failure to: (1) appear at the scheduled § 341 meeting of creditors; (2) provide Trustee with any requested documents; and (3) make all payments due under the plan. Doc. #40. In addition, the debtors have failed to file the correct form for Chapter 13 Plan as provided by the Local Rule 3015-1(a) Official Local Form EDC 3-080 (rev. 11/9/18) and General Order GO.18-03 Order Adopting Attached Chapter 13 Plan as Official Local Form EDC 3-080. The debtors filed Official Form 113. Doc. #40. Finally, the debtors are ineligible to be debtors in a Chapter 13 pursuant to 11 U.S.C. § 109(h) because the debtors failed to complete Credit Counseling Certificate timely. Doc. #40. The debtors did not oppose the motion.

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

prejudicial to creditors because the debtors failed to appear at the scheduled § 341 meeting of creditors and failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Cause also exists under 11 U.S.C. § 1307(c)(4) to dismiss this case as the debtors have failed to make all payments due under the plan.

Under 11 U.S.C. § 109(h), an individual may not be a debtor unless the debtor received credit counseling within the 180-day period ending on the petition date. 11 U.S.C. § 109(h)(1). The Bankruptcy Code allows the debtor to request a waiver of the § 109(h)(1) requirement to receive credit counseling pre-petition based on exigent circumstances. 11 U.S.C. § 109(h)(3)(A). However, the debtors have not requested a waiver of the § 109(h)(1) requirements and, because the debtors did not receive credit counseling prior to filing their bankruptcy petition and have not received a waiver of that requirement, the debtors may not be debtors pursuant to § 109(h).

For the above reasons and because the debtors have failed to appear at the meeting of creditors, dismissal rather than conversion is appropriate.

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

7. [22-11816](#)-A-13 **IN RE: CESAR PENA BANDA AND SILVIA PENA**
[NLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-30-2022 [\[31\]](#)

WILMINGTON SAVINGS FUND SOCIETY, FSB/MV
ZISHAN LOKHANDWALA/ATTY. FOR DBT.
NICHOLE GLOWIN/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court is granting the trustee's Motion to Dismiss [MHM-2], calendar matter #6 above, therefore this Motion for Relief from the Automatic Stay [NLG-1] will be DENIED AS MOOT.

8. [22-10826](#)-A-13 **IN RE: CHRISTOPHER RENNA**
[MHM-2](#)

MOTION TO DISMISS CASE
12-2-2022 [\[50\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

9. [22-10826](#)-A-13 **IN RE: CHRISTOPHER RENNA**
[TCS-2](#)

MOTION TO CONFIRM PLAN
12-8-2022 [\[54\]](#)

CHRISTOPHER RENNA/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

10. [22-12134](#)-A-13 **IN RE: GUADALUPE RAMIREZ**
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY
12-21-2022 [\[8\]](#)

GUADALUPE RAMIREZ/MV
SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtor Guadalupe Maria Ramirez ("Debtor") moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B).

Debtor had a Chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 19-10965 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on March 14, 2019 and dismissed on September 8, 2022. Decl. of Guadalupe Maria Ramirez, Doc. #10. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtor filed this case on December 16, 2022. Petition, Doc. #1. The automatic stay will terminate in the present case on January 15, 2023.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the

later case is in good faith as to the creditors to be stayed[.]” 11 U.S.C. § 362(c) (3) (B) .

Section 362(c) (3) (C) (i) creates a presumption that the case was not filed in good faith if (1) the debtor filed more than one prior case in the preceding year; (2) the debtor failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) the debtor has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c) (3) (C) (i) .

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c) (3) (C) . Under the clear and convincing standard, the evidence presented by the movant must “place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are ‘highly probable.’” Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition.” Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted) vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019) .

In this case, the presumption of bad faith arises. Debtor failed to perform the terms of a confirmed plan in the Prior Case. A review of the court’s docket in the Prior Case disclosed a chapter 13 plan was confirmed on December 16, 2019. Case No. 19-10965, Doc. #68. On August 11, 2022, the chapter 13 trustee filed and set for hearing a motion to dismiss the Prior Case for Debtor’s failure to make plan payments (the “Motion”). Case No. 19-10965, Doc. ##81-84. Debtor did not oppose the Motion, and the court dismissed the Prior Case. Case No. 19-10965, Doc. ##85-86. Debtor acknowledges that the Prior Case was dismissed for failure to timely pay plan payments. Ramirez Decl., Doc. #10.

In support of this motion to extend the automatic stay, Debtor declares that the plan payments in the Prior Case were not made timely because in late Spring of 2022, Debtor took over the care of her four elderly and disabled maternal aunts and one maternal uncle that no one else in Debtor’s family had the ability or wherewithal to do. Ramirez Decl., Doc. #10. During this time, Debtor was responsible for taking all her aunts and her uncle to their medical appointments, seeking out a new primary care physician for her aunts and uncle, ensuring the medical prescriptions for her aunts and uncle were filled, going grocery shopping for her aunts and uncle, and helping her aunts and uncle pay their bills with their income. Id. Debtor exhausted her paid time off work during this time, lost income, and was unable to make her plan payments. Id.

Debtor states that she is more settled into her routine and can now care for her elderly and disabled aunts and uncle while going back to work full time. Ramirez Decl., Doc. #10. Debtor’s plan payments are higher than the payments called for in the Prior Case, but Debtor has increased her monthly income through contributions to her household from her two daughters and her mother, all three of which live with Debtor. Id. Debtor filed a proposed plan on December 16, 2022. Doc. #3. Debtor’s Schedules I and J filed in this case list monthly income of \$3,852.43 and expenses of \$1,391.00, resulting in monthly net income of \$2,461.43 of which Debtor proposes to apply \$2,460.00 to plan payments in this case. Schedules I and J, Doc. #1; Ramirez Decl., Doc. #10. Debtor is confident that a chapter 13 plan will be confirmed in this case and that Debtor has the income ability to maintain plan payments. Ramirez Decl., Doc. #10.

The court is inclined to find that Debtor's taking over the care of her four elderly and disabled aunts and one elderly and disabled uncle rebuts the presumption of bad faith that arose from Debtor's failure to perform the terms of a confirmed plan in the Prior Case and that Debtor's petition commencing this case was filed in good faith. Moreover, the court recognizes that Debtor's increased monthly income represents a substantial change in financial affairs since the dismissal of the Prior Case.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes as to those parties that received notice of Debtor's motion (see Doc. #8), unless terminated by further order of the court.

11. [18-14242](#)-A-13 **IN RE: ELIZABETH FRANCO**
[SL-6](#)

MOTION TO SELL
12-21-2022 [\[107\]](#)

ELIZABETH FRANCO/MV
SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted subject to the conditions set forth in the
secured creditor's conditional non-opposition.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. While not required, the secured creditor holding a deed of trust on the property to be sold filed a conditional non-opposition. Doc. #112. Unless further opposition is presented at the hearing, the court intends to enter the defaults of the non-responding parties and grant the motion subject to the conditions set forth in the secured creditor's conditional non-opposition. If further opposition is presented at the hearing, the court will consider that 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.

Elizabeth Ann Franco ("Debtor") petitions the court for an order authorizing Debtor to sell real property located at 1550 E. Vine Ct. Visalia, CA 93292 (the "Property") for \$320,000.00. Doc. #107. Debtor filed a voluntary chapter 13 petition on October 19, 2018. Doc. #1. Debtor's first modified chapter 13 plan was confirmed on May 11, 2020 and provides for a 100% dividend to general unsecured creditors. Am. Plan, Doc. #93; Order, Doc. #96.

LBR 3015-1(h)(1)(E) provides in relevant part that "if the debtor wishes to . . . transfer property on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

This motion was properly served and noticed. Debtor has a fee simple ownership interest in the Property. Am. Schedule A/B, Doc. #69. Debtor asserts that she intends on paying off her chapter 13 bankruptcy once the sale is complete. Decl. of Elizabeth Franco, Doc. #109. The Property is encumbered by liens and/or security interests totaling \$66,130.39 that will be paid in full simultaneously with the transfer of the title to the buyer or held by escrow holder until agreements between the parties, or further court order. Franco Decl., Doc. #109; Schedule C, Doc. #1. Debtor also asserts that the sale will allow her to pay off approximately \$38,995.00 in unsecured debt and, once the sale is approved, Debtor hopes all of her unsecured creditors will be paid by the chapter 13 trustee. See Schedule E/F, Doc. #1. The chapter 13 trustee shall approve the estimated closing statement and escrow instructions and shall submit a demand for closing, or disbursing, agent for proceeds necessary to pay off the chapter 13 case. Doc. #107. All costs of sale, title insurance, and commissions will be paid in full from the proceeds of the sale. Id. The court finds that the sale of the Property is in the best interests of the estate and will result in full payment of Debtor's confirmed chapter 13 plan.

While not required, a conditional non-opposition has been filed by Wells Fargo Bank, NA ("Wells Fargo"). Doc. #112. Wells Fargo does not oppose Debtor's motion on the condition that the following provisions are included in any order granting Debtor's motion to sell:

- (1) Wells Fargo's consent to the motion to sell is contingent upon the payment of Wells Fargo's lien on the Property in full from the proceeds of the sale;
- (2) Wells Fargo's claim shall be paid off in full prior to releasing its lien on the Property;
- (3) Wells Fargo is authorized to submit an updated payoff demand to the appropriate escrow company facilitating the sale closer in time to the closing of the proposed sale; and
- (4) The deadline for the close of escrow and receipt of funds should be within 60 days from the date of the order granting the motion to sell.

The court finds, subject to objection by Debtor, that the requests of Wells Fargo are reasonable and should be incorporated into the order approving this motion.

Accordingly, this motion is GRANTED subject to the conditions set forth in Wells Fargo's conditional non-opposition. Debtor is authorized, but not required, to sell the Property in a manner consistent with the residential purchase agreement filed as Exhibit A, Doc. #110, and Wells Fargo's conditional non-opposition.

12. [22-11349](#)-A-13 **IN RE: IAN FRITZ**
[WSL-2](#)

MOTION TO CONFIRM PLAN
11-17-2022 [\[46\]](#)

IAN FRITZ/MV
GREGORY SHANFELD/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. Further, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. The court encourages counsel for the debtor to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

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

13. [22-11852](#)-A-13 **IN RE: KERRIE GRAY**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-1-2022 [\[34\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

The court is granting the trustee's Motion to Dismiss [MHM-2], calendar matter #14 below, therefore this Objection to Debtor's Claim of Exemptions [MHM-1] will be OVERRULED AS MOOT.

14. [22-11852](#)-A-13 **IN RE: KERRIE GRAY**
[MHM-2](#)

MOTION TO DISMISS CASE
12-15-2022 [\[37\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the 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). 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 default of the debtor is 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors. Doc #37. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) provide Trustee with any requested documents; and (2) make all payments due under the plan. Doc. #37. In addition, the debtor failed to file complete and accurate schedules as required by 11 U.S.C. § 521 and/or Federal Rule of Bankruptcy Procedure 1007. Doc #37.

In particular, the debtor's Schedule A/B does not list any household goods or furnishings. Doc. #37; Schedule A/B, Doc. #14. Further, the debtor has failed to file tax returns for the year 2021, and that failure is additional grounds for dismissal under 11 U.S.C. § 1307(e). Doc. #37. Upon the failure of the debtor to file a tax return under 11 U.S.C. § 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate. 11 U.S.C. § 1308(a). Doc. #37. Finally, the debtor is ineligible to be a debtor in a Chapter 13 pursuant to 11 U.S.C. § 109(h) because the debtor failed to complete Credit Counseling Certificate timely. Doc. #37. The debtor did not oppose the motion.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Cause also exists under 11 U.S.C. § 1307(c)(4) to dismiss this case as the debtor has failed to make all payments due under the plan.

Under 11 U.S.C. § 109(h), an individual may not be a debtor unless the debtor received credit counseling within the 180-day period ending on the petition date. 11 U.S.C. § 109(h)(1). The Bankruptcy Code allows the debtor to request a waiver of the § 109(h)(1) requirement to receive credit counseling pre-petition based on exigent circumstances. 11 U.S.C. § 109(h)(3)(A). However, the debtor has not requested a waiver of the § 109(h)(1) requirements and, because the debtor did not receive credit counseling prior to filing her bankruptcy petition and has not received a waiver of that requirement, the debtor may not be a debtor pursuant to § 109(h).

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

15. [22-11952](#)-A-13 **IN RE: HERNAN CORTEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-22-2022 [\[24\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case may be dismissed on the grounds stated in the order to show cause. The debtor owes \$1.00 for the balance of the installment fee due on December 16, 2022. The debtor paid \$78.00 toward the \$79.00 installment fee that was due.

If the installment fee due at the time of hearing is paid before the hearing, the order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

16. [21-10856](#)-A-13 **IN RE: MARK/AMELIA CAVE**
[SL-8](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
12-14-2022 [\[127\]](#)

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.

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

Scott Lyons, Attorney at Law ("Movant"), counsel for Mark David Cave and Amelia Ann Cave (collectively, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation in the amount of \$7,483.50 and reimbursement for expenses in the amount of \$1,346.00 for services rendered from April 11, 2022 through December 8, 2022. Doc. #127. Debtors' confirmed plan provides, in addition to \$2,000.00 paid prior to filing the case, for \$58,000.00 in attorney's fees to be paid through the plan. Am. Plan, Doc. ##93, 126. Two prior fee application has been approved authorizing interim compensation in the amount of \$32,271.00 and reimbursement of expenses in the amount of \$1,279.24. Doc. #127. Debtors have no objection to the requested fees and expenses. Doc. #127.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtors' first and second modified plan; (2) drafting opposition to

chapter 13 trustee's motion to dismiss; (3) preparing response to the trustee's opposition to motion to confirm Debtors' second modified plan; (4) preparing the fee application; and (5) general case administration. Exs. A & B, Doc. #129. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$7,483.50 and reimbursement for expenses in the amount of \$1,346.00 to be paid in a manner consistent with the terms of the confirmed plan.

17. [22-11562](#)-A-13 **IN RE: FRANCISCO LOPEZ JUAREZ AND VICKIE JUAREZ**
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SPECIALIZED LOAN
SERVICING LLC
10-25-2022 [\[17\]](#)

SPECIALIZED LOAN SERVICING LLC/MV
SCOTT LYONS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

The debtors' plan was confirmed on December 19, 2022. Doc. #45. Creditor Specialized Loan Servicing LLC signed the order confirming the plan. Therefore, this motion will be DROPPED AS MOOT.

18. [22-11572](#)-A-13 **IN RE: BRANDEE LEONARD**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-16-2022 [\[43\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.
FINAL INSTALLMENT PAID 12/23/22

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid. The case shall remain pending.

19. [22-11875](#)-A-13 **IN RE: MATTHEW CRIPPEN**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-2-2022 [\[11\]](#)

MICHAEL MEYER/MV

NO RULING.

20. [22-11787](#)-A-13 **IN RE: RICHARD STERLING**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-23-2022 [\[32\]](#)

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

The court is granting the trustee's Motion to Dismiss [MHM-2], calendar matter #21 below, therefore this Order to Show Cause will be DROPPED AS MOOT.

21. [22-11787](#)-A-13 **IN RE: RICHARD STERLING**
[MHM-2](#)

MOTION TO DISMISS CASE
12-13-2022 [\[26\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the 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). 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 default of the debtor is 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As an informative matter, the certificate of service filed in connection with this motion (Doc. #29) used an older version of the court's Official Certificate of Service form (EDC Form 7-005, New 09/2022) instead of the most updated version of the court's Official Certificate of Service Form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors. Doc #26. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) appear at the scheduled § 341 meeting of creditors; (2) provide Trustee with any requested documents; and (3) make all payments due under the plan. Doc. #26. The debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors because the debtor failed to appear at the scheduled § 341 meeting of creditors and failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Cause also exists under 11 U.S.C. § 1307(c)(4) to dismiss this case as the debtor has failed to make all payments due under the plan.

A review of the debtor's Schedules A/B and D shows that the debtor's significant assets, vehicle, and real property, are over encumbered. Schedule A/B & D, Doc. #20. The debtor claims exemptions in the remaining assets. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate. Dismissal rather than conversion also is appropriate because the debtor has failed to appear at the meeting of creditors.

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

22. [22-11395](#)-A-13 **IN RE: GLORIA GARCIA**
[SLL-2](#)

MOTION TO CONFIRM PLAN
11-30-2022 [\[33\]](#)

GLORIA GARCIA/MV
STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

1. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
[22-1004](#) [SR-3](#)

MOTION TO COMPEL
11-29-2022 [\[34\]](#)

JUAREZ BROTHERS INVESTMENTS, LLC V. GRIMMWAY ENTERPRISES, INC.
THOMAS WOODS/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on at least 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1). The plaintiff timely filed written
opposition. This matter will proceed as scheduled.

As a procedural matter, the certificate of service filed in connection with
this motion does not comply with LBR 7005-1 and General Order 22-03, which
require attorneys and trustees to use the court's Official Certificate of
Service Form as of November 1, 2022. The court encourages counsel for the
moving party to review the local rules to ensure compliance in future matters
or those matters may be denied without prejudice for failure to comply with the
local rules. The rules can be accessed on the court's website at
<https://www.caeb.uscourts.gov/LocalRules.aspx>.

Grimmway Enterprises, Inc., a Delaware Corporation ("Defendant"), moves
pursuant to Federal Rule of Civil Procedure ("Rule") 37, made applicable to
this adversary proceeding through Federal Rule of Bankruptcy Procedure
Rule 7037, for an order compelling Juarez Brothers Investments, LLC, a
California limited liability company ("Plaintiff"), to serve its responses and
produce documents responsive to Defendant's First Set of Request for Production
as well as awarding attorney's fees. Motion, Doc. #34.

The court is inclined to DENY Defendant's motion because Defendant did not meet
the certification requirements of Rule 37(a)(1) before filing this motion.
Because the court is DENYING Defendant's motion, the court will not award the
requested attorney's fees.

Background

Plaintiff commenced this adversary proceeding on January 11, 2022 by filing a
complaint seeking to quiet title to real property; determine the invalidity of
the lien of the deed of trust; cancel the issuance and recordation of an
unauthorized instruction; and injunctive relief to stay trustee's sale. Adv.
Proc. No. 22-01004. Doc. #1. Pursuant to the Order Granting Joint Motion to
Modify Scheduling Order, fact discovery is to be completed by no later than
January 16, 2023. Doc. #33.

//

Motion to Compel Standard

Rule 37(a)(1), made applicable in bankruptcy adversary proceedings by Federal Rule of Bankruptcy Procedure Rule 7037, requires that a motion to compel discovery "include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make . . . discovery in an effort to obtain it without court action." Fed. R. Civ. P. 37(a)(1). This certification requirement was described in Shuffle Master v. Progressive Games, 170 F.R.D. 166 (D. Nev. 1996), as comprising two elements:

[T]wo components are necessary to constitute a facially valid motion to compel. First is the actual certification document. The certification must accurately and specifically convey to the court who, where, how, and when the respective parties attempted to personally resolve the discovery dispute. Second is the performance, which also has two elements. The moving party performs, according to the federal rule, by certifying that he or she has (1) in good faith (2) conferred or attempted to confer. Each of these two subcomponents must be manifested by the facts of a particular case in order for a certification to have efficacy and for the discovery motion to be considered.

Shuffle Master, 170 F.R.D. at 170 (emphasis in original).

The Shuffle Master court explained: "[A] moving party must include more than a cursory recitation that counsel have been 'unable to resolve the matter.'" Shuffle Master, 170 F.R.D. at 171. To meet the certification requirement,

counsel must set forth 'essential facts sufficient to enable the court to pass a preliminary judgment on the adequacy and sincerity of the good faith conferment between the parties. That is, a certificate must include, *inter alia*, the names of the parties who conferred or attempted to confer, the manner by which they communicated, the dispute at issue, as well as the dates, times, and results of their discussions, if any.'

In re Sanchez, No. 03-22417-D-13L, 2008 WL 4155115, at *3 (Bankr. E.D. Cal. Sept. 8, 2008) (quoting Shuffle Master, 170 F.R.D. at 171).

"[G]ood faith cannot be shown merely through the perfunctory parroting of statutory language on the certificate to secure court intervention; rather [the rule] mandates a genuine attempt to resolve the discovery dispute through non-judicial means." Shuffle Master, 170 F.R.D. at 171.

The Shuffle Master court held that Rule 37(a)(1) "requires a party to have had or attempted to have had an actual meeting or conference." Shuffle Master, 170 F.R.D. at 171. "'[C]onferring' under [Rule 37(a)(1)] must be a personal or telephonic consultation during which the parties engage in meaningful negotiations or otherwise provide legal support for their position." Id. at 172. The Shuffle Master court found that a series of facsimile letters transmitted between parties in that case did not satisfy the requirement. Id.

These principles were adopted and applied in the bankruptcy context in Sanchez, in which the bankruptcy court concluded that the motion to compel in that case, supported by a supplemental declaration that referred to and quoted several letters between parties, and referred to a single conversation with Plaintiff's counsel, did not qualify as an "actual certification document" that "accurately and specifically convey[s] to the court who, where, how, and when the respective parties attempted to personally resolve the discovery dispute."

Sanchez, 2008 WL 4155115, at *3. Further, "it appears no attempt was made to arrange a personal or telephonic communication to meaningfully discuss the discovery disputes." Id.

The court adopts the standards set forth in Shuffle Master, and as applied in this case, finds that Defendant's motion does not satisfy the certification requirement of Rule 37(a)(1).

Application to Defendant's Motion

Defendant's motion contains a certification statement in the declaration of Thomas A. Woods. Mr. Woods testifies that he has "in good faith conferred and attempted to confer with Plaintiff in an effort to obtain Plaintiff's Responses and Documents responsive to Defendant's Request without court action pursuant to Federal Rule of Civil Procedure 37(a)(1), Federal Rule of Bankruptcy Procedure 7037, and the Court's Scheduling Order (Dkt. Nos. 28, 33), as demonstrated by Exhibit 4 attached hereto and paragraphs 6-8 of this Declaration." Decl. of Thomas A. Woods, Doc. #35.

In the memorandum of points and authorities ("MPA") filed with the motion to compel, Defendant's counsel contends that Defendant's counsel met and conferred with Plaintiff regarding Plaintiff's responses and produced documents attempting to resolve the dispute without court action. MPA, p.5, Doc.# 37. To support this statement, Defendant's counsel highlights that Defendant's counsel extended Plaintiff's deadline to respond to November 14, 2022, but even so Plaintiff failed to timely produce responses or request to further extend its deadline to respond to the requests. Id. Further, on November 18, 2022, Defendant's counsel conferred with Plaintiff's counsel by telephone and email and provided ten additional days from the date of conferring to Plaintiff to serve code-compliant, objection-free responses and documents. Id.; Woods Decl. ¶¶ 7-11, Doc. #35; Ex. 4, Doc. #38. Defendant's counsel also contends that since (i) Plaintiff has demonstrated throughout this case that Plaintiff will not timely comply with discovery, (ii) the close of discovery is fast-approaching, and (iii) the responses that Plaintiff did serve were woefully deficient, as they include only general, boilerplate objections and no response, further meet and confer was futile. MPA, p.5, Doc.# 37.

In a Separate Statement in Support of the Motion, Defendant's counsel reiterates that Plaintiff has demonstrated that further conferring was futile based on Plaintiff's past conduct in discovery. Doc. #36. Further, Defendant's counsel contends that Plaintiff's correspondence in an email indicated that Plaintiff's counsel had not even discussed responses with his client, further demonstrating the delay and futility in further conferring. Separate Statement in Support of the Motion, Doc. #36.

First, the court finds that the certification statement in Mr. Woods' declaration is nothing more than the "perfunctory parroting of the statutory language." Shuffle Master, 170 F.R.D. at 171. Mr. Woods' declaration does not qualify as an "actual certification document" that "accurately and specifically convey[s] to the court who, where, how, and when the respective parties attempted to personally resolve the discovery dispute," as the Shuffle Master court phrased the requirement. Id. at 172.

Turning next to Defendant's counsel's contention that Defendant's counsel met and conferred with Plaintiff, Defendant's counsel has failed to provide facts that demonstrate a good faith conferment. Defendant's counsel conferred with Plaintiff's counsel by telephone and email and provided ten additional days from the date of conferring to Plaintiff to serve code-compliant, objection-free responses and documents, but it appears no attempt was made to arrange a

personal or telephonic communication to meaningfully discuss the discovery disputes outside of these instances. Shuffle Master, 170 F.R.D. at 172.

The court is unwilling to find that the Rule 37(a)(1) requirement of a meet and confer certificate was satisfied when Mr. Woods sent two emails in which he provided deadlines for further responses to his discovery requests and concluded that if such responses were not received, Mr. Woods would assume that none would be forthcoming. Further, based on these communications and Defendant's counsel's contention that further conferring is futile based on Plaintiff's past conduct in discovery, the court cannot determine that, prior to filing this motion to compel, Defendant, as the moving party, or its counsel "personally engage[d] in two-way communication with the nonresponding party to meaningfully discuss each contested discovery dispute in a genuine effort to avoid judicial intervention." Id. at 171.

Defendant's motion to compel is denied because Defendant did not meet the certification requirements of Rule 37(a)(1) before filing this motion.

Request for Attorney's Fees

Rule 37(a)(4) permits a moving party to recover reasonable expenses incurred in making a discovery motion, including attorney's fees, provided the court grants the motion or the discovery is provided after the filing of the motion. However, the awarding of expenses and attorney's fees are not appropriate where the moving party filed a discovery motion without first making a good faith effort to obtain the discovery through non-judicial channels. Fed. R. Civ. P. 37(a)(4)(A). Here, Defendant failed to make this effort, and Defendant's request for attorney's fees must be denied.

Accordingly, the motion to compel, including the request for attorney's fees, is denied.

2. [19-13871-A-7](#) **IN RE: JENNA LONG**
[22-1009](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
12-15-2022 [[50](#)]

LONG V. U.S. DEPARTMENT OF EDUCATION ET AL
UNKNOWN TIME OF FILING/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

3. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1023](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
5-26-2021 [\[1\]](#)

U.S. TRUSTEE V. NICOLE
JUSTIN VALENCIA/ATTY. FOR PL.
CONT'D TO 4/13/23 PER ECF ORDER #85

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

DISPOSITION: Continued to April 13, 2023 at 11:00 a.m.

NO ORDER REQUIRED.

On December 15, 2022, the court issued an order continuing the pre-trial conference to April 13, 2023 at 11:00 a.m. Doc. #85.

4. [22-11499](#)-A-7 **IN RE: STEVEN HARO**
[22-1026](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE DISCLOSURE STATEMENT
12-12-2022 [\[7\]](#)

HIGH BAND CONSTRUCTION INC. V. HARO ET AL

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the missing corporate disclosure statement was filed on December 13, 2022. Doc. #9. Therefore, this order to show cause will be VACATED.