



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, February 8, 2024
Department A – 510 19th Street
Bakersfield, California**

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be as instructed below.

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

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

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

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

D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection to confirmation is OVERRULED AS MOOT. The debtor filed a first amended plan on January 26, 2024 (DMG-1, Doc. #41), with a motion to confirm the modified plan set for hearing on March 7, 2024 at 9:00 a.m. Doc. ##38-42.

2. [23-12130](#)-A-13 **IN RE: PAMELA MULLEN**
[MHM-1](#)

CONTINUED RE: OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
11-1-2023 [[15](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4). The debtor opposed the objection at the initial hearing held on December 7, 2023. The court continued the hearing on the objection and set a schedule for further pleadings to be filed. Doc. #19. The debtor timely filed a written response and supporting declaration on January 18, 2024. Doc. ##26, 27. The chapter 13 trustee has not filed any additional pleadings.

Pamela Jean Mullen ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on September 25, 2023. Doc. #1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because (1) the plan payments do not provide for payment in full of the priority proof of claim filed by the Internal Revenue Service ("IRS"), and (2) the plan provides 0% to general unsecured creditors but Debtor intends to pay \$429.00 per month for a Harley Davidson motorcycle that Trustee contends is not reasonable and necessary for the support of Debtor. Doc. #15.

Section 1325(a) (6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a) (6). The party moving to confirm the chapter 13 plan bears the burden of proof to show facts supporting the proposed plan. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997).

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects.

The IRS filed its proof of claim on October 19, 2023. Claim 1-1. The IRS asserts a claim of \$65,680.00, of which \$28,720.00 is secured, \$6,758.52 is unsecured entitled to priority, and \$30,381.48 is an unsecured general claim. Claim 1-1. Although the priority tax claim is an estimated amount due to a pending examination of Debtor's tax return, no party in interest has objected to the IRS's claim. The Plan estimates that there are no priority unsecured claims. Plan ¶3.12, Doc. #3.

Debtor did not address this objection in her supplemental papers. Because the Plan does not provide sufficient Plan payments to pay the IRS's filed priority claim in full, Trustee's objection to confirmation on this ground will be sustained.

With respect to the payment of the secured claim for the Harley Davidson motorcycle, section 1325(b) (1) (B) provides that if a trustee objects to confirmation of a chapter 13 plan, the court may not confirm the plan unless all of the debtor's "projected disposable income" to be received during the term of the plan will be applied to make payments to unsecured creditors. 11 U.S.C. § 1325(b) (1) (B). Here, because Debtor has an income that is below the median, Debtor "must prove on a case-by-case basis that each claimed expense is reasonably necessary. See [11 U.S.C.] §§ 1325(b) (2) and (3)." Ransom v. FIA Card Servs., N.A., 562 U.S. 61, 71 n.5 (2011).

Reasonably necessary expenses that a below median debtor can deduct from current monthly income are determined in accordance with pre-BAPCPA standards. In re Berry, Case No. 12-01226-PCW13, 2013 Bankr. LEXIS 296, at *4 (Bankr. E.D. Wash. Jan. 23, 2013). Debtor's supplemental pleadings do not provide any legal authority as to what this court should consider when determining whether a claimed expense is reasonably necessary. Based on this court's research, under applicable pre-BAPCPA case law, the standard for determining whether an expense is reasonably necessary has three aspects.

[T]he standard [first] requires that reasonably necessary expenses be determined on a case by case basis. Second, the standard must be flexible to allow the debtor some latitude with regard to what can be claimed as a discretionary expense and in what amounts. Although some discretionary expenses are necessary for maintenance and support, the amount claimed must be subject to a reasonableness limitation. Finally, the court would agree that a debtor with a high income who is paying substantial amounts into the plan may retain a greater dollar amount for discretionary expenses than a debtor of more modest income who proposes little or no payment to unsecured creditors.

In re Gillead, 171 B.R. 886, 890 (Bankr. E.D. Cal. 1994) (citing Matter of Anderson, 143 B.R. 719, 721 (Bankr. D. Neb. 1992)).

Schedule A/B shows that Debtor has two vehicles in addition to the Harley Davidson motorcycle. Schedule A/B, Doc. #1. Schedule J also shows that Debtor's household consists of Debtor and her 21-year-old granddaughter. Schedule J, Doc. #1. In her supplemental declaration, Debtor testifies that the motorcycle is her lifeline and gives Debtor a reason to live. Decl. of Pamela Mullen, Doc. #27. Pre-petition, Debtor's husband got sick, lost his business, and died suddenly. Id. Without the ability to ride the motorcycle, Debtor states that there is no reason to live and work. Id.

While the court empathizes with Debtor's situation, the court must analyze Trustee's objection in accord with applicable case law. In particular, the court must examine whether Debtor's request to retain the motorcycle as a discretionary expense and not pay anything to general unsecured creditors meets the requisite reasonableness limitation on permitted discretionary expenses.

Here, Debtor has one 21-year-old dependent and two operating vehicles in addition to the motorcycle. Under the proposed 36-month plan, \$429.00, nearly half of Debtor's \$1,000.00 monthly plan payment, is allocated to pay the secured debt on the motorcycle. Another \$429.00 is allocated to pay the secured debt on one of the vehicles. At the same time, the plan provides for 0% to general unsecured creditors. This court found no case, and Debtor did not cite to one, where a court permitted a below-median income debtor to retain a motorcycle in a situation where the debtor had another operating vehicle and was not paying any amount to unsecured creditors under the proposed chapter 13 plan.

The court finds that Debtor, who has the burden of proof on all elements of plan confirmation, has not established that retention of the Harley Davidson motorcycle is reasonably necessary for Debtor's maintenance or support under applicable law or is within the reasonableness limitation imposed on discretionary expenses of a below median chapter 13 debtor. As a result, not all of Debtor's projected disposable income is being applied to make payments to unsecured creditors as is required by 11 U.S.C. § 1325(b)(1)(B), and Trustee's objection to confirmation on this ground will be sustained.

Accordingly, the objection will be SUSTAINED.

3. [23-12338](#)-A-13 **IN RE: SALINA THOMAS**

MOTION TO CONFIRM PLAN
1-4-2024 [[35](#)]

SALINA THOMAS/MV
DAVID CHUNG/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

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

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice 3015-1(d)(1). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the chapter 13 plan. Tr.'s Opp'n, Doc. #42. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor

shall file and serve a written response no later than February 22, 2024. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by February 29, 2024.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 22, 2024. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

4. [23-10445](#)-A-13 **IN RE: ROGELIO/MYRA RIOS**
[RSW-2](#)

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

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

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 chapter 13 trustee timely opposed this motion but withdrew the opposition in consideration of the language proposed by the debtors to be included in the proposed order confirming the plan. Doc. #50, 58, 69. 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.

This motion is GRANTED. The confirmation order shall be consistent with the language set forth in the chapter 13 trustee's reply to the debtor's response, Doc. #58.

5. [23-12263](#)-A-13 **IN RE: ROBERTA DAVID**
[MHM-2](#)

MOTION TO DISMISS CASE
12-12-2023 [\[21\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.
DISMISSED 12/28/23

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 December 28, 2023. Doc. #27.
Therefore, this motion will be DENIED AS MOOT.

6. [23-10168](#)-A-13 **IN RE: ROBERT IRVIN**
[RSW-3](#)

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

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

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

An order confirming the third modified plan was entered on January 23, 2024.
Doc. #180. Therefore, this motion will be DROPPED AS MOOT.

7. [23-12470](#)-A-13 **IN RE: JAMES/SADIE WITT**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
12-20-2023 [\[25\]](#)

RAJ WADHWANI/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

James Raymond Witt and Sadie Mae Witt (together, "Debtors") filed their chapter 13 plan (the "Plan") on November 9, 2023. Doc. #17. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan on the grounds that the Plan: (1) fails to comply with the provisions of title 11 required by 11 U.S.C. § 1325(a)(1); and (2) provides for the payment of attorneys' fees in excess of the fixed compensation allowed in LBR 2016-1(c). Doc. #25.

11 U.S.C. § 1325(a)(1) requires the Plan to comply with the provisions of this chapter and with the other applicable provisions of this title. 11 U.S.C. § 1325(a)(1). Trustee contends Schedule A/B needs to be amended to disclose Debtors' bank account with Navy Federal Credit Union, \$7,000 of cash, and life insurance policies. Doc. #25. Additionally, Schedule H No. 2 needs to be completed and Schedule I needs to disclose the joint debtor's social security income. Id.

LBR 2016-1(c)(4)(B) provides that after confirmation of a debtor's plan, Trustee shall pay the debtor's attorney a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received in equal monthly installments over the term of the confirmed plan. Additionally, LBR 2016-1(c)(3) states that attorneys who claim fees under LBR 2016-1(c) shall not seek, nor accept, a retainer greater than the sum of 25% of the fee specified in LBR 2016-1(c)(1) plus the amount of costs in LBR 2016-1(c)(2).

Here, the proposed Plan provides for attorney's fees totaling \$4,000 of which \$2,500.00 is to be paid through the Plan and \$1,500 has already been paid to Debtors' attorney. Doc. #1. The Plan proposes to pay a monthly dividend of \$1,000.00 to Debtors' attorney, and that amount exceeds the monthly installment amount permitted by LBR 2016-1(c)(4)(B). The attorney fee dividend needs to be reduced to \$41.67 per month to comply with LBR 2016-1(c). Additionally, by applying the formula set forth in LBR 2016-1(c)(3), 25% of attorney's fees in the amount of \$4,000 plus \$500 in expenses yields a maximum retainer of \$1,125 that Debtors' attorney was allowed to accept. However, Debtors' attorney accepted a retainer that exceeds the permitted maximum retainer by \$375.

Further, an amended Disclosure of Compensation form needs to be filed to remove the language from No. 6 which states "Negotiations with secured creditors to reduce to market value; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 U.S.C 522(f)(2)(A) for avoidance of liens on household goods" and "judicial lien avoidances, relief from stay actions, motions to dismiss." Doc. #1.

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

8. [23-12071](#)-A-13 **IN RE: MARYLOU ROMERO**
[RSW-1](#)

MOTION TO CONFIRM PLAN
1-4-2024 [\[24\]](#)

MARYLOU ROMERO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

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

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice 3015-1(d)(1). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the chapter 13 plan. Tr.'s Opp'n, Doc. #40. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than February 22, 2024. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by February 29, 2024.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 22, 2024. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

9. [23-12071](#)-A-13 **IN RE: MARYLOU ROMERO**
[RSW-2](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
1-9-2024 [\[33\]](#)

MARYLOU ROMERO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 an informative matter, the address for the chapter 13 trustee in the notice of hearing to which any opposition should be sent is inaccurate. The notice of hearing is dated January 4, 2024, and the name and address for the chapter 13 trustee is: Michael H. Meyer, P.O. Box 28950, Fresno, CA 93729. Doc. #34. However, Mr. Meyer retired as the chapter 13 trustee as of December 31, 2023. Doc. #22. The name and address of the successor chapter 13 trustee is: Lilian G. Tsang, P.O. Box 3051, Modesto, CA 95353-3051, and that should have been the name and address used in the notice of hearing.

Marylou Romero ("Debtor"), the debtor in this chapter 13 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Capital One Bank (USA), N.A. ("Creditor") on the residential real property commonly referred to as 1628 E. 11th Street, Bakersfield, CA 93307 (the "Property"). Doc. #33; Schedule C & D, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtor filed the bankruptcy petition on September 18, 2023. Doc. #1. A judgment was entered against Debtor in the amount of \$10,517.17 in favor of Creditor on April 16, 2021. Ex. 4, Doc. #35. The abstract of judgment was recorded pre-petition in Kern County on May 5, 2021, as document number 221085679. Ex. 4, Doc. #35. The lien attached to Debtor's interest in the Property located in Kern County. Schedule D, Doc. #1. The Property also is encumbered by a deed of trust in favor of Mrc/united Wholesale M in the amount \$23,545.65 and a statutory lien in favor of California Gardens HOA in the amount of \$7,755.04. Schedule D, Doc. #1. Debtor claimed an exemption of \$339,203.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$130,300.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$10,517.17
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$31,300.69
Amount of Debtor's claim of exemption in the Property	+	\$339,203.00
		\$381,020.86
Value of Debtor's interest in the Property absent liens	-	\$130,300.00
Amount Creditor's lien impairs Debtor's exemption		\$250,720.86

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien.

Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

10. [23-12474](#)-A-13 **IN RE: KRISTIN WINSOR**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST NATIONAL ASSOCIATION
12-21-2023 [\[23\]](#)

U.S. BANK TRUST NATIONAL ASSOCIATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection to confirmation was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Although not required, the debtor filed a written response. Doc. #31. The court intends to sustain the objection because the debtor's filed Amended Schedules A/B and C do not support the increased plan payments proposed in the response.

Kristin Winsor ("Debtor") filed her chapter 13 plan ("Plan") on November 15, 2023. Doc. #13. U.S. Bank Trust National Association ("Creditor") objects to confirmation of the Plan on the ground that the Plan cannot be confirmed because it is not feasible in accordance with 11 U.S.C. §1325(a)(6). Doc. #23.

Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6). The party moving to confirm the chapter 13 plan bears the burden of proof to show facts supporting the proposed plan. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997).

Debtor's plan lists plan payments in the amount of \$1,534.00 for months 1 through 12 and \$2,567.00 for months 13 through 48. Doc. #13. However, Debtor's Schedule J lists Debtor's monthly net income as -\$329.00. Schedule J, Doc. #11. Based on Debtor's filed schedules, Debtor lacks sufficient monthly disposable income to fund this plan.

Debtor's Schedule I indicates Debtor expects an increase in her monthly income by applying for social security income and renting rooms. Schedule I, Doc. #11. Creditor requested for Debtor to supplement the record to show additional income. Doc. #23. Debtor responded to Creditor's objection stating that Debtor has not yet received any additional income but is hopeful that she will receive backpay from social security. Doc. #31. Additionally, Debtor is in the process of putting her house on the market which she estimates has \$200,000.00 in equity. Id. Debtor requested that the hearing on this objection to confirmation be continued to allow Debtor more time to be in a position to confirm the Plan.

Id. Debtor filed an amended Schedule A/B and C to reflect Debtor's expected social security benefit backpay with no anticipated amount mentioned. Am. Schedules A/B & C, Doc. #37.

Based on the currently filed Schedules, the court finds that Debtor has not met her burden of proof to show that Debtor will be able to make the proposed increased plan payments. The court is not inclined to continue the hearing on this objection to confirmation as requested by Debtor because the Plan, as proposed, cannot be confirmed. Because Debtor's chapter 13 plan will be funded in part by a sale of Debtor's real property, a new plan needs to be filed and set for a confirmation hearing.

Accordingly, the objection will be SUSTAINED.

11. [23-12675](#)-A-13 **IN RE: TEMPEST COLTER**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
1-23-2024 [[22](#)]

DAVID CHUNG/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Trustee withdrew the objection to confirmation on February 5, 2024. Doc. #28.

12. [23-12583](#)-A-13 **IN RE: MIGUEL/ISELA RAMIREZ**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
1-5-2024 [[18](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

1. [23-12306](#)-A-7 **IN RE: THOMAS/SAMMIE-LEE LEWIS**
[JCW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-23-2024 [\[26\]](#)

PLANET HOME LENDING, LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
DISCHARGED 1/22/23

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied as moot in part.

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

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 in part and deny the motion as moot in part. 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.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on January 22, 2024. Doc. #25. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Planet Home Lending, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(2) with respect to a piece of real property located at 7944 Worthington St., Onyx, CA 93255 ("Property").

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

The court finds that the debtors do not have any equity in the property and the property is not necessary to an effective reorganization because the debtors are in chapter 7. Movant has valued the Property at \$301,300.00. Doc. #26. The amount owed to Movant is \$283,542.63. Doc. #26. There is negative equity for the bankruptcy estate after accounting for 8% cost of sale (\$24,104.00). Doc. #26. On November 21, 2023, the chapter 7 trustee filed a report of no distribution. Doc. #19. The debtors' statement of intention indicates that the debtors intend to surrender the property. Doc. #1.

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

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because there is no equity in the property for the bankruptcy estate.

2. [21-12224](#)-A-7 **IN RE: LACEY FREEMAN**
[RSW-4](#)

MOTION TO DISMISS CASE
1-11-2024 [\[81\]](#)

LACEY FREEMAN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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.

Lacey Freeman ("Debtor") moves to dismiss his chapter 7 case on the grounds that Debtor has minimal unsecured debt and does not need a discharge in bankruptcy. Doc. #81.

A debtor does not have an absolute right to dismiss a voluntary chapter 7 case. Bartee v. Ainsworth (In re Bartee), 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004). Section 707 of the Bankruptcy Code governs dismissal of a chapter 7 case, whereby the court "may dismiss a case under this chapter only after notice and a hearing and only for cause." 11 U.S.C. § 707(a); In re Kaur, 510 B.R. 281, 285 (Bankr. E.D. Cal. 2014). Regarding cause, a voluntary chapter 7 debtor is entitled to dismissal so long as such dismissal will cause no legal prejudice to interested parties. Kaur, 510 B.R. at 286 (citations omitted).

Debtor filed a chapter 13 bankruptcy petition on September 17, 2021. Doc. #1 Debtor stopped making plan payments in his chapter 13 case and elected to convert his case to chapter 7 instead of dismissing his chapter 13 case. Doc. #59. In converting this case the chapter 7, Debtor expected the chapter 7 trustee to sell his house to pay off all debts. Decl. of Lacey Freeman, Doc. #83. However, the chapter 7 trustee has decided not to sell Debtor's house

due to the need for a probate to clear title to the house and the unsecured debt being less than \$1,000.00. Doc. #81; Freeman Decl., Doc. #83.

The court finds that dismissing Debtor's voluntary chapter 7 case will cause no legal prejudice to interested parties because Debtor has minimal unsecured debt and no longer needs a discharge in bankruptcy.

Accordingly, this motion is GRANTED.

3. [23-12264](#)-A-7 **IN RE: MATTHEW/MARY FOSTER**
[JMV-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT
SEC. 341(A) MEETING OF CREDITORS
12-8-2023 [\[14\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

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

The debtors shall attend the meeting of creditors rescheduled for February 9, 2024 at 11:00 a.m. If the debtors fail to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

4. [23-12671](#)-A-7 **IN RE: ARTURO/DAVID ESPINOZA**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-19-2023 [\[14\]](#)

MERCEDES-BENZ VEHICLE TRUST/MV
DAVID CHUNG/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Mercedes-Benz Vehicle Trust ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2023 Mercedes-Benz EQE 350, VIN: 4JGGM2BB8PA011714 (the "Vehicle"). Doc. #14.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least five complete pre-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$8,499.05. Decl. of Star Faz, Doc. #19.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to gain immediate possession of the Vehicle pursuant to applicable law. No other relief is awarded. Debtors did not list the vehicle on the Statement of Intention. Doc. #1.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least five pre-petition payments to Movant in accordance with the lease agreement and the Vehicle is a depreciating asset.

10:30 AM

1. [23-12784](#)-A-11 **IN RE: KODIAK TRUCKING INC.**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
12-15-2023 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

2. [23-12784](#)-A-11 **IN RE: KODIAK TRUCKING INC.**
[FWP-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-26-2024 [[110](#)]

INTEGRATED VEHICLE LEASING, INC./MV
PETER FEAR/ATTY. FOR DBT.
THOMAS PHINNEY/ATTY. FOR MV.

NO RULING.

1. [20-13451](#)-A-7 **IN RE: AMANDEEP SINGH**
[21-1004](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
2-5-2021 [[1](#)]

BMO HARRIS BANK, N.A. V. SINGH
RAFFI KHATCHADOURIAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [23-10394](#)-A-7 **IN RE: JENNIFER NIX**
[23-1050](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
11-20-2023 [[1](#)]

NIX V. NAVIENT ET AL
JENNIFER NIX/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.