



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Wednesday, February 8, 2023
Department B – 510 19th Street
Bakersfield, California**

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

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

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1. Review the [Pre-Hearing Dispositions](#) prior to attending 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.

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

9:00 AM

1. [18-12004](#)-B-13 **IN RE: HERBERT KELLEY**
[MHM-3](#)

MOTION TO DISMISS CASE
12-21-2022 [\[99\]](#)

MICHAEL MEYER/MV
SUSAN SALEHI/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this motion on February 2, 2023. Doc. #110. Accordingly, this motion will be dropped and taken off calendar pursuant to the withdrawal.

2. [22-11818](#)-B-13 **IN RE: ARNOLDO OLAGUE**
[MHM-1](#)

MOTION TO DISMISS CASE
1-5-2023 [\[31\]](#)

MICHAEL MEYER/MV
VINCENT QUIGG/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 15, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and failure to confirm a chapter 13 plan. Doc. #31.

Arnoldo Olague ("Debtor") opposes dismissal on the basis that he filed a motion to confirm the *Second Amended Chapter 13 Plan* dated January 13, 2023, which is set for hearing on February 15, 2023. Doc. #43.

Accordingly, this motion to dismiss will be CONTINUED to February 15, 2023 at 9:30 a.m. to be heard in connection with the motion to confirm plan.

3. [22-11818](#)-B-13 **IN RE: ARNOLDO OLAGUE**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-10-2023 [\[35\]](#)

MICHAEL MEYER/MV
VINCENT QUIGG/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Arnolando Olague's ("Debtor") claim of exemption in a checking account with Wells Fargo Bank in the amount of \$2,000.00 pursuant to Cal. Code Civ. Proc. ("CCP") § 704.070(b)(2). Doc. #35. Debtor did not oppose.

This objection will be SUSTAINED.

This objection was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the sustaining of the objection. *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 objecting party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the objecting party has done here.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 Meeting of Creditors is held or within 30 days after any amendment to *Schedule C* is filed, whichever is later.

Debtor filed chapter 13 bankruptcy on October 25, 2022. Doc. #1. The first § 341 Meeting was held and concluded on January 10, 2023. Docket generally. Trustee timely filed this objection that same day. Doc. #35.

Trustee objects because the exemption does not comply with CCP 704.070 on its face. *Id.* CCP § 704.070 provides for the following exemption:

Seventy-five percent of the paid earnings that are levied upon or otherwise sought to be subjected to the enforcement of a money judgment are exempt if prior to payment to the employee they were not subject to an earnings withholding order or an earnings assignment order for support.

CCP § 704.070. Since the exemption does not indicate whether the funds are paid earnings, or even if the funds are earnings that were paid during the 30-day period prior to the petition date, or that the funds were subject to an earnings withholding order or earnings assignment at the time of filing, Trustee contends that CCP § 704.070 is inapplicable.

The Eastern District of California Bankruptcy Court in *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that “the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies.”

Based on the record, Debtor has failed to establish by a preponderance of the evidence that Debtor is entitled to exempt the entirety of the bank account under CCP § 704.070. Accordingly, this objection will be SUSTAINED.

4. [22-11720](#)-B-13 **IN RE: ERIN STEVENSON**
[MHM-2](#)

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

MATTHEW DECAMINADA/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

ORDER: The court will issue an order.

This objection was originally heard on January 4, 2023. Doc. #33. Chapter 13 trustee Michael H. Meyer ("Trustee") objected to confirmation of the *Chapter 13 Plan* filed by Erin David Stevenson ("Debtor") on October 5, 2022 pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) because (1) Debtor has not scheduled all debts required to be scheduled pursuant to 11 U.S.C. § 521(a); (2) Debtor has not filed all applicable tax returns required by § 1325(a)(9); and (3) the plan fails to provide for the value, as of the effective date of the plan, of property to be distributed under the plan on account of each unsecured claim in at least the amount that would be paid if the estate was liquidated under chapter 7. Doc. #24.

The objection was continued to February 8, 2023 and Debtor was directed to file and serve a written response with admissible evidence not later than January 25, 2023, or a confirmable modified plan not later than February 1, 2023, or the objection would be sustained on the grounds stated in the objection without a further hearing. Docs. ##33-34.

Debtor neither filed a written response nor a confirmable, modified plan. Accordingly, this objection will be SUSTAINED.

5. [22-10122](#)-B-13 **IN RE: MANNY/ERLINDA MENDEZ**
[RSW-2](#)

MOTION TO SELL
1-17-2023 [[30](#)]

ERLINDA MENDEZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

Manny Medina Mendez and Erlinda Garcia Mendez (collectively "Debtors") seek authorization to sell the estate's interest in real and personal property located at 2345 Alta Vista Drive, 2401 Alta Vista Drive, 2405 Alta Vista Drive, and 308 Jeffrey Street in Bakersfield, California, which include a liquor store with inventory and a liquor license (collectively "Estate Assets"), to CV Venturers, LLC ("Proposed Buyer") for \$900,000.00, subject to higher and better bids at the hearing. Doc. #30.

Written opposition was not required and may be presented at the hearing.

This motion was filed and served on at least 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure ("Rule") 2002(a)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults. 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.

11 U.S.C. § 363(b)(1) allows the trustee to "sell or lease, other than in the ordinary course of business, property of the estate."

11 U.S.C. § 1303 states that the "debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections . . . 363(b) . . . of this title." 11 U.S.C. § 1302(b)(1) excludes from a chapter 13 trustee's duties the collection of estate property and reduction of estate assets to money. Therefore, the debtor has the authority to sell property of the estate under § 363(b).

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners v. Colony GFP Partners, Ltd. P'Ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" *Id.* citing *In re Psychometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to Proposed Buyer. Nothing in the record indicates that Proposed Buyer is an insider with respect to Debtors. Proposed Buyer is neither listed in the schedules nor the master address list. Doc. #1; #4. Further, joint debtor Erlinda Mendez declares that this is an arms-length transaction, and the offer was obtained through the Debtors' real estate agent. Doc. #32.

2345 Alta Vista is Debtors' residence, but 2401 Alta Vista and 2405 Alta Vista appear to be commercial properties. Doc. #32. The properties at 308 Jeffrey Street and 2405 Alta Vista are in the pending probate estate of Ms. Erlinda Mendez's mother, so the sale of those properties will have to be approved by the probate court. *Id.*

Some of the Estate Assets are listed in the schedules as follows:

Estate Asset	Value	Exemption	Lien
2345, 2401, & 2407 Alta Vista Drive	\$1,000,000.00	\$300,000.00	\$288,300.48
2405 Alta Vista Drive	\$152,044.00	\$0.00	\$0.00
3 liquor licenses - 21, 47, & 48	\$300,000.00	\$0.00	\$0.00
Computer, etc. [office equipment]	\$200.00	\$200.00	\$0.00
Liquor store shelving, etc.	\$100.00	\$0.00	\$0.00
Restaurant equipment	\$200,000.00	\$17,450.00	\$0.00
Alcoholic beverages, candy, etc.	\$200,000.00	\$0.00	\$0.00
Totals	\$1,852,344.00	\$317,650.00	\$288,300.48

Scheds. A/B, C, D, Doc. #1. Notably, 308 Jeffrey Street is not listed on the schedules. Furthermore, 2407 Alta Vista Drive does not appear to be a part of this sale. The schedules note that 2345 Alta Vista is Debtors' residence and they have claimed a \$300,000.00 exemption pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C, id.* The Alta Vista properties are not encumbered by any mortgages, but 2345, 2401, & 2407 Alta Vista are collectively encumbered by multiple tax liens in favor of the California Employment Development Department ("EDD"), the Franchise Tax Board ("FTB"), and the Kern County Tax Collector ("KCTC"), as well as a judgment lien in favor of Commercial Trade Bureau of California ("CTBC") in the total sum of \$288,300.48. *Sched. D, id.* From the schedules, EDD has six liens totaling \$94,251.88, FTB has two liens totaling \$36,532.84, KCTC has three liens totaling \$149,870.75, and CTBC has one lien in the amount of \$7,645.01. *Ibid.* The Proofs of Claim filed in this case reveal the following information:

Creditor	Scheduled Claim	Total (Proof of Claim)	Notes
EDD	\$94,251.88	\$287,145.92	\$115,780.12 priority & \$171,365.80 unsecured
FTB	\$36,532.84	\$141,614.50	\$131,585.88 secured
KCTC	\$149,870.75	\$169,343.90	\$169,343.90 secured
CTBC	\$7,645.01	N/A	No Claim filed, but \$7,645.01 secured
Totals	\$288,300.48	\$598,104.32	\$308,574.79 secured

Cf. Claims Nos. 1-1, 2-2, 7-1.

Proposed Buyer submitted four separate offers: one for each of the four real properties included in the Estate Assets, copies of which have been delivered to the chapter 13 trustee. Doc. #30. The offer on the building housing the liquor store includes an addendum to purchase the inventory and liquor licenses for an additional \$210,000.00. *Id.*

Debtors contend that the offer for their residence at 2345 Alta Vista is for \$250,000.00. On the date of filing, the KCTC was owed \$84,738.20 on this property as evidenced by their Proof of Claim No. 2, so Debtors claim that their exemption under CCP § 704.730 results in \$165,261.80 in remaining exempted equity in 2345 Alta Vista. Claim No. 2 indicates that \$169,343.90 of KCTC's claim is secured, but this amount is spread across Debtors' properties as follows: (a) \$49,674.23

secured by 2401 Alta Vista; (b) \$27,216.14 secured by 2405 Alta Vista; (c) \$7,715.33 secured by 308 Jeffrey Street; and (d) \$84,738.20 secured by 2345 Alta Vista.

Next, although the FTB has claims with secured blanket liens on all of Debtors' real properties in the amount of \$131,585.88, Debtors want these liens to be paid from escrow in full from the sale of the other real properties. *Id.*; cf. Claim No. 1-1. On this basis, Debtors claim entitlement to payment of their homestead exemption in the amount of \$165,585.88 with all remaining proceeds being paid from escrow to the chapter 13 trustee. *Id.* However, Debtors did not seek to sell the Estate Assets free and clear of liens pursuant to 11 U.S.C. § 363(f), nor have they filed an adversary proceeding to "marshal" Creditor's interest. See, e.g., *In re Spectra Prism Indus., Inc.*, 28 B.R. 397, 399 (B.A.P. 9th Cir. 1983) (equitable marshalling available when there are two or more funds, only one creditor with the right to resort to both funds, absence of prejudice, and marshalling will avoid injustice to third parties). Therefore, the court declines to order how FTB may collect the balance on its blanket security interest.

EDD has a priority claim in the amount of \$115,780.12 and a non-priority, unsecured claim in the amount of \$171,365.80. Claim No. 7-1. Contrary to the purported judgment liens in the schedules, it appears that EDD's claim consists only of priority unsecured, and non-priority unsecured components. *Id.*

Lastly, Debtors have not addressed the \$7,645.01 judgment lien in favor of CTBC. Though CTBC did not file a proof of claim, Debtors concede the existence of this judgment creditor with an interest in 2345, 2401, & 2407 Alta Vista. *Sched. D*, Doc. #1.

Debtors proposed sale of the Estate Assets can be illustrated as follows:

Combined sale price	\$900,000.00
FTB lien on all properties	- \$131,585.88
KCTC lien on 2401 Alta Vista	- \$49,674.23
KCTC lien on 2405 Alta Vista	- \$27,216.14
KCTC lien on 308 Jeffrey Street	- \$7,715.33
KCTC lien on 2345 Alta Vista	- \$84,738.20
CTBC judgment lien	- \$7,645.01
Debtors' homestead exemption for 2345 Alta Vista	- \$165,585.88
Costs of sale (split 50/50)	- ?
Broker commissions (6%?)	- \$54,000.00
Net proceeds for the estate	≤ \$371,839.33

Doc. #30.

The supporting declaration of Erlinda Mendez states the properties were listed in the bankruptcy schedules for about twice the proposed sale price. Doc. #32. True enough, Ms. Mendez said they had no

professional help in evaluating the properties when the bankruptcy was filed. Yet, the declaration contains a hearsay statement of Debtors' broker that this offer is the best cash offer they could expect. It is not persuasive.

There is no evidence of the steps Debtors and their broker followed to reach this offer. This case was filed about one year ago. In the absence of higher and better bidding at the hearing, the court will require further proof on the issue of the reasonableness of the price.

Depending upon the proof, whether Debtor's are exercising valid business judgment can or cannot be assessed. For example, 308 Jeffrey Street is not listed on Debtors' schedules.

There is no current evidence of a lack of good faith unless there is opposition at the hearing.

Should the court grant the motion the order shall provide the Trustee shall approve the final escrow closing statement(s) as to all properties and the order shall be approved as to form by the Trustee.

6. [22-12136](#)-B-13 **IN RE: JERRY GRIDER**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-11-2023 [\[25\]](#)

MICHAEL MEYER/MV

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 Objecting Party shall submit a proposed order after hearing.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Jerry K. Grider's, Sr. ("Debtor"), claim of exemption in a "Vacant Lot" in the amount of \$75,000.00 under "11 U.S.C. 522(B)(2)." Doc. #25. Debtor did not oppose.

This matter will be called and proceed as scheduled because Debtor is *pro se*. The court intends to SUSTAIN this objection.

This objection was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the sustaining of the objection. *Cf. Ghazali v.*

Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 Meeting of Creditors is held or within 30 days after any amendment to *Schedule C* is filed, whichever is later.

Debtor filed chapter 13 bankruptcy on December 16, 2022. Doc. #1. The first § 341 Meeting was held on January 31, 2023 and continued to March 21, 2023. Docket generally. Trustee timely filed this objection on January 11, 2023. Doc. #25.

Trustee objects because there is no 11 U.S.C. § 522(B)(2), and § 522(b)(2) provides "property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize." *Id.* Since California has opted out of the federal exemptions, Trustee contends that Debtor must elect exemptions under California law.

The Eastern District of California Bankruptcy Court in *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies."

Based on the record, Debtor has failed to establish by a preponderance of the evidence that Debtor is entitled to exempt the Vacant Lot under "11 U.S.C. 522(B)(2)." Accordingly, this objection will be SUSTAINED.

7. [22-11741](#)-B-13 **IN RE: JOSEPH MARTIN**
[KMM-1](#)

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

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

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

DISPOSITION: Sustained.

ORDER: The court will issue an order.

This objection was originally heard on January 4, 2023. Doc. #31.

Toyota Motor Credit Corporation dba Lexus Financial Services ("Creditor") objected to confirmation of the *Chapter 13 Plan* filed on October 24, 2022 by Joseph Wayne Martin ("Debtor") pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) because Creditor's \$29,392.07 claim is secured by a 2016 Lexus GX460 ("Vehicle"), which is listed as a Class 2(A) claim in the amount of \$28,972.00. *Id.* Creditor's claim is modified by the plan, but no motions to value collateral have been filed. Moreover, Creditor contends that the plan fails to use the appropriate "prime-plus" or "formula rate" interest rate as required by § 1325(a)(5)(B) and outlined in the Supreme Court's ruling in *Till v. SCS Credit Corp. (In re Till)*, 541 U.S. 465 (2004). Lastly, the plan proposes monthly payments of \$4,770.00, but Debtor's monthly net income is only \$3,750.06 according to the schedules at the time this objection was filed. *Id.*

The objection was continued to February 8, 2023 and Debtor was directed to file and serve a written response with admissible evidence not later than January 25, 2023, or a confirmable modified plan not later than February 1, 2023, or the objection would be sustained on the grounds stated in the objection without a further hearing. Docs. ##33-34.

Debtor neither filed a written response nor a confirmable, modified plan. Accordingly, this objection will be SUSTAINED.

8. [22-11551](#)-B-13 **IN RE: JASMINE SIMPSON**
[MHM-2](#)

MOTION TO DISMISS CASE
12-14-2022 [\[42\]](#)

MICHAEL MEYER/MV
DANIEL KING/ATTY. FOR DBT.
DISMISSED 12/23/22

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

Debtor Jasmine Genyea Simpson voluntarily dismissed this case on December 23, 2022. Doc. #50. Accordingly, the chapter 13 trustee's motion to dismiss will be DENIED AS MOOT.

9. [22-11665](#)-B-13 **IN RE: EDWIN LEDFORD**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
1-3-2023 [\[24\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Edwin Michael Ledford ("Debtor") on October 15, 2022. Doc. #24. Trustee objects under 11 U.S.C. §§ 1322(a) and 1325(a)(6) because the plan fails to provide for submission of all or such portion of future earnings or other future income to the supervision and control of the Trustee as is necessary to execute the plan, and Debtor will not be able to make all payments under the plan and comply with the plan. *Id.*

Though not required, Debtor responded. Doc. #28.

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 except Debtor. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Trustee objects because Debtor's *Amended Schedule I* indicates that Debtor is not employed and has no income. Doc. #24, citing *Am. Sched. I*, Doc. #15 (\$0.00 monthly income). Meanwhile, the plan calls for payments of \$2,330.64 per month for 60 months and payment of ongoing mortgage and pre-petition arrears totaling \$42,840.01, but Debtor has no regular income to support such a plan payment. Doc. #16.

In response, Debtor concedes that he "is not unemployed [*sic*] full time yet," but Debtor believes he will be able to continue making plan payments. Doc. #28. Debtor is currently seeking employment and hopeful about a position for which he has had four interviews. Doc. #29. Debtor also has two upcoming interviews for different positions. *Id.* However, Debtor has been receiving unemployment since October 2022 and expects it to continue through October 7, 2023 at \$900.00 biweekly, or until he becomes fully employed. *Id.* Additionally, Debtor has been driving for Uber Eats since November 2022, resulting in an average income of \$1,116.00 monthly, and working on independent projects that has paid \$2,100.00 this month. *Id.* Further, Debtor's child support payment was recently reduced from \$1,906.00 to \$936.00 per month, he received \$3,500.00 from his parents for his birthday, and Debtor's

girlfriend who is paying many of their expenses has recently moved in. *Id.*

Debtor filed *Amended Schedules I & J* on January 26, 2023, which indicate receipt of \$5,666.00 in monthly income and \$3,555.00 in monthly net income. Doc. #33. This monthly income consists of \$1,950.00 in unemployment, \$1116.00 from Uber Eats, \$500.00 from live-in partner, and \$2,100.00 from independent computer work. *Id.*

The "independent computer work" is not thoroughly explained. So, it is not possible to determine whether it is sufficiently "regular" to fund the plan. The gift from Debtor's parents is, by its' nature, not regular. The contribution from Debtor's partner is also not thoroughly explained nor supported with evidence of any ongoing financial commitment that would make the income "regular".

This matter will be called and proceed as scheduled to inquire about Trustee's reply to Debtor's opposition, if any.

10. [22-11969](#)-B-13 **IN RE: KARLA GARCIA**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-13-2022 [\[18\]](#)

MICHAEL MEYER/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

ORDER: The Objecting Party shall submit a proposed order after hearing.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Karla Garcia's ("Debtor") claim of exemptions in a residence and wage account under Cal. Code Civ. Proc. ("CCP") §§ 704.730 and 704.080(a)(1), respectively. Doc. #18.

Debtor did not respond.

This matter will be called and proceed as scheduled because Debtor is *pro se*. The court intends to SUSTAIN this objection.

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

above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 Meeting of Creditors is held or within 30 days after any amendment to *Schedule C* is filed, whichever is later.

Debtor filed chapter 13 bankruptcy on November 18, 2022. Doc. #1. The first § 341 Meeting was held on December 27, 2022 and continued to February 21, 2023. Docket generally. Trustee timely filed this objection on December 13, 2022. Doc. #18.

Debtor exempted a "Residence" under CCP § 704.730 and a "wage account" under CCP § 704.080(a)(1), both in unspecified amounts equal to "100% of fair market value, up to any applicable statutory limit." *Sched. C*, Doc. #11.

CCP § 704.730 provides:

(a) The amount of the homestead exemption is the greater of the following:

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).

(2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

CCP § 704.730. On January 1, 2022, this exemption was automatically updated to increase the minimum exemption to \$312,600.00, and the maximum countywide median sale price for a single-family home exemption to \$625,200.00 based on the change in the annual Consumer Price Index (4.2%). The exemption increased again on January 1, 2023, but since this case was filed in 2022, Debtor is only entitled to exempt the amounts specified in the 2022 adjustment.

Meanwhile, CCP § 704.080(a)(1) provides for an exemption in a "deposit account" in which payments of public benefits or social security benefits are directly deposited by the government or its agents. Depending on whether one or two depositors are designated payees, and whether the account contains deposited public benefits or social security payments, the exemption ranges between \$1,900.00 or \$2,825.00

(public benefits), \$3,825.00 or \$5,725.00 (social security benefits), or no stated limit for all monies traceable to social security or public benefits.

Trustee objects because Debtor did not list a specific dollar amount for either the CCP §§ 704.730 or 704.080 exemptions. First, it is unclear whether Debtor is claiming the minimum statutory exemption in the "residence" under CCP § 704.730(a)(2) (\$312,600.00), or a higher exemption under subsection (a)(1) based on the Kern County median sale price for a single-family home in 2021. Doc. #18. Second, no "wage account" is listed in *Schedule A/B*, so Trustee is unable to determine if the "wage account" is a deposit account in which public benefits or social security is directly deposited into it by the government or its agents.

The Eastern District of California Bankruptcy Court in *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies."

Based on the record, Debtor has failed to establish by a preponderance of the evidence that Debtor is entitled to exempt the "residence" or the "wage account" in unspecified amounts equal to "100% of fair market value[s], up to any applicable statutory limit." This matter will be called as scheduled because Debtor is *pro se*, but the court is inclined to SUSTAIN this objection.

11. [22-11969](#)-B-13 **IN RE: KARLA GARCIA**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-16-2022 [\[21\]](#)

AMERICREDIT FINANCIAL SERVICES, INC./MV
SHERYL ITH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot in part; granted in part.

ORDER: The Moving Party shall submit a proposed order after hearing.

Americredit Financial Services, Inc. dba GM Financial ("Movant"), seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) with respect to a 2016 Volkswagen Jetta ("Vehicle"). Doc. #21. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.* Karla Garcia ("Debtor") did not oppose.

This matter will be called and proceed as scheduled because Debtor is *pro se*. This motion will be DENIED AS MOOT because no automatic stay is currently in effect with respect to Debtor and GRANTED IN PART with respect to the estate.

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

If a bankruptcy case is filed within one year of another pending case, 11 U.S.C. § 362(c)(3)(A) states that the automatic stay will expire with respect to the debtor on the 30th day after the second case is filed. Under § 362(c)(3)(B), on motion by a party in interest, the automatic stay may be extended if heard "before the expiration of the 30-day period[.]"

This case was filed on November 18, 2022. Doc. #1. Debtor's petition discloses one other bankruptcy case filed within the last year: Case No. 22-11151. That case was filed on July 7, 2022 before the Honorable Jennifer E. Niemann and was dismissed on November 3, 2022 for failure to appear at the § 341 meeting of creditors, failure to provide the chapter 13 trustee with required documents, and failure to set a modified plan for hearing with notice to creditors. See Case No. 22-11151, Docs. ##46-47.

Since this case was filed within one year of Debtor's previous case, the automatic stay with respect to Debtor ran from November 18 to December 18, 2022. A motion to extend the automatic stay was not filed and heard before December 18, 2022, so it expired with respect to Debtor on that date and cannot be reimposed.

Courts are divided on whether § 362(c)(3)(A) terminates the automatic stay in its entirety, or only "with respect to the debtor." *Compare Reswick v. Reswick (In re Reswick)*, 446 B.R. 362, 367-73 (B.A.P. 9th Cir. 2011) (ignoring "with respect to the debtor" language of § 362(c)(3)(A) and concluding that the automatic stay terminates in its entirety on the 30th day after the petition date for a second bankruptcy filing within one year), with *In re Thu Thi Dao*, 616 B.R. 103, 105-17 (Bankr. E.D. Cal. 2020) (granting chapter 7 trustee's motion under § 362(h)(2) to preserve personal property of the estate because § 362(c)(3) did not terminate the stay with respect to the estate). But even if *Dao*, rather than *Reswick*, applies, cause exists to lift the automatic stay with respect to the estate.

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

Based on the record, Debtor defaulted under the agreement with Movant to finance the purchase of Vehicle. As of December 7, 2022, Debtor is in default a total of \$2,491.67 for a partial payment of \$445.15 due for August 2022, and four regular payments due September through December 2022, each in the amount of \$511.63. Doc. #21. Debtor is indebted to Movant a total of \$16,404.77 through December 7, 2022. *Id.* Therefore, cause exists for relief from the automatic stay under § 362(d)(1).

This matter will be called and proceed as scheduled because Debtor is not represented by counsel. The court is inclined to DENY AS MOOT IN PART this motion because the automatic stay is not currently in effect with respect to Debtor, and GRANT IN PART this motion with respect to the estate. The 14-day stay of Rule 4001(a)(3) will be ordered waived because Vehicle is a depreciating asset.

12. [22-11973](#)-B-13 **IN RE: ALAN/REBECCA WIGGINS**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
1-3-2023 [\[21\]](#)

SUSAN SALEHI/ATTY. FOR DBT.

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

DISPOSITION: Resolved by stipulation.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Alan W. Wiggins and Rebecca N. Wiggins (collectively "Debtors") on November 18, 2022. Doc. #21. Trustee objects because the plan fails to provide for the value of property to be distributed under the plan on account of each allowed, unsecured claim in at least the amount that would be paid if this case were liquidated under chapter 7. *Id.*

Debtors did not respond. However, on January 23, 2023, the parties filed a joint stipulation in which Debtors agreed to pay general unsecured claims interest at the federal judgment rate of 4.73%. Doc. #24. A copy of the proposed order confirming plan approved as to form by Trustee was filed as an exhibit. *Ex. A*, Doc. #25.

Accordingly, Trustee's objection has been RESOLVED BY STIPULATION and will be dropped and taken off calendar.

13. [22-11679](#)-B-13 **IN RE: DELANO/MONICA WILLIAMS**
[MHM-1](#)

MOTION TO DISMISS CASE
12-23-2022 [\[46\]](#)

MICHAEL MEYER/MV
ANH NGUYEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 15, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case for cause pursuant to 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors and failure to confirm a chapter 13 plan. Doc. #46.

Delano Jamere Williams and Monica Marlene Williams (collectively "Debtors") timely responded, indicating that the *Second Amended Chapter 13 Plan* dated December 23, 2022 is set for hearing on February 15, 2023. Docs. ##50-51.

Accordingly, Trustee's motion to dismiss will be CONTINUED to February 15, 2023 at 9:30 a.m. to be heard in connection with Debtor's motion to confirm plan.

14. [22-11586](#)-B-13 **IN RE: CHERYLANNE FARLEY**
[RSW-2](#)

MOTION TO CONFIRM PLAN
12-21-2022 [\[35\]](#)

CHERYLANNE FARLEY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
DISMISSED 1/4/23

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court entered an order dismissing this case on January 4, 2023. Doc. #47. Accordingly, the debtor's motion to confirm plan will be DENIED AS MOOT.

15. [22-12088](#)-B-13 **IN RE: MARY MACKEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-22-2022 [\[14\]](#)

DISMISSED 12/27/22

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

The court entered an order dismissing this case on December 27, 2022. Doc. #17. Accordingly, this order to show cause will be dropped and taken off calendar as moot.

16. [22-11792](#)-B-13 **IN RE: JOSEPH/SEPTEMBER MIDDLETON**
[DMG-1](#)

MOTION TO CONFIRM PLAN
1-4-2023 [\[24\]](#)

SEPTEMBER MIDDLETON/MV
D. GARDNER/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.

Joseph William Middleton and September Anna Lucille Middleton (collectively "Debtors") seek an order confirming the *First Amended Chapter 13 Plan* dated January 4, 2023 ("Proposed Plan"). Doc. #24. The Proposed Plan provides that Debtors shall make 60 monthly payments of \$3,550.00 with a 100% dividend to allowed, non-priority unsecured claims. Doc. #27. Debtors' *Schedules I & J* indicate that they receive \$3,917.00 in monthly net income, which is sufficient to fund the proposed payment. Doc. #1. No party in interest timely filed written opposition.

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

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

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

10:00 AM

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

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-13-2023 [[496](#)]

LEONARD WELSH/ATTY. FOR DBT.
\$188.00 FILING FEE PAID 1/18/23

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the \$188.00 filing fee was paid on January 18, 2023. Accordingly, the order to show cause will be VACATED.

2. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[RK-6](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-25-2023 [[661](#)]

PNC BANK, NATIONAL ASSOCIATION/MV
LEONARD WELSH/ATTY. FOR DBT.
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

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 Moving Party shall submit a proposed order after hearing.

PNC Bank, N.A. ("Movant") moves for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) with respect to two 2021 and two 2022 Utility VS2RA Reefer trailers (collectively "Trailers"). Doc. #661. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion.

This motion was filed and served 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.

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).

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

Here, Movant has produced evidence that Freon Logistics ("Debtor") entered into two agreements to finance the purchase of the Trailers between November 25, 2020 and December 18, 2020. *Exs. 1-8*, Doc. #665. The agreements are cross collateralized, and Movant owes a combined \$230,563.93 under both agreements. Debtor defaulted under the first agreement on November 15, 2022, and the second agreement on December 1, 2022, by failing to make the required payments under the agreements. Debtor has missed post-petition payments totaling \$14,913.98, which consists of two post-petition payments on the first agreement, and three post-petition payments on the second agreement. Doc. #664. Additionally, Debtor has failed to maintain adequate insurance coverage on the Trailers. Therefore, cause exists for relief from the automatic stay under § 362(d)(1).

The court declines finding that Debtor does not have any equity in the Trailers. Although they are not necessary for an effective reorganization because this is a chapter 7 case, Movant's valuation results in a 17.66% equity cushion in the trailers, or \$49,436.07. Doc. #661. However, relief under subsection (d)(2) is moot because the cause exists for stay relief under (d)(1).

Accordingly, this motion will be GRANTED IN PART pursuant to 11 U.S.C. § 362(d)(1) and DENIED IN PART with respect to § 362(d)(2). The 14-day stay of Rule 4001(a)(3) will be ordered waived because the Trailers are depreciating assets.

3. [20-13420](#)-B-7 **IN RE: CHRISTOPHER MARTENS**
[JMV-2](#)

MOTION FOR COMPENSATION FOR JEFFREY M. VETTER, CHAPTER 7
TRUSTEE(S)
1-7-2023 [[157](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted provided Trustee files an amended
certificate of service prior to the hearing.

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

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") requests final compensation in the total sum of \$42,358.10 under 11 U.S.C. §§ 326, 330. Doc. #157. This amount consists of \$41,600.30 in statutory fees for services rendered to the estate and \$757.80 in reimbursement for actual, necessary expenses from October 28, 2020 through January 7, 2023. *Id.*

No party in interest timely filed written opposition. However, this matter will be called as scheduled due to a procedural defect in Trustee's certificate of service. This motion may be GRANTED at the hearing provided that Trustee files an amended certificate of service prior to the hearing. Otherwise, the motion will be DENIED WITHOUT PREJUDICE.

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

As a preliminary matter, the certificate of service (Doc. #161) does not comply with LBR 7005-1, which is effective as of November 1, 2022 under General Order 22-04. *Cf. Gen. Order 22-04* (Oct. 6, 2022). Though Applicant used the correct official form EDC 007-005, LBR 7005-1 requires the movant to attach the Clerk of the Court's official matrices containing the names and addresses of all parties served. The

Clerk's matrices are available on the court's website or through PACER, shall be downloaded not more than seven days prior to the date of serving the pleadings or other documents, and shall reflect the date of download. LBR 7005-1(d).¹

Here, the certificate of service appears to include an official Clerk's matrix for "notice only" dated January 7, 2023. Doc. #161 at 7. However, the document entitled "Attachment 6A1" does not appear to be an official version of Attachment 6A1. *Id.* at 5-6. It is not formatted like one of the Clerk's matrices, does not contain a time or date stamp, and appears to be a replication of the official matrix.

Typically, this motion would be denied without prejudice for the above deficiency. However, Fed. R. Civ. P. 4(1)(3), *incorporated by* Fed. R. Bankr. P. 7004(a)(1), provides that failure to prove service does not affect the validity of service, and the court may permit the proof of service to be amended. Since this is Trustee's second attempt at filing this motion and the "notice only" attachment appears to be the correct Clerk's official matrix, the court may overlook the deficiency in the first service list purporting to be Attachment 6A1 provided that Trustee files an amended certificate of service that complies with LBR 7005-1 and evidences proper service on the Attachment 6A1 parties in interest.

Christopher Robert Martens ("Debtor") filed chapter 7 bankruptcy on October 28, 2020. Doc. #1. Trustee was appointed as the interim trustee on that same date and became permanent trustee at the first § 341 meeting of creditors on December 4, 2020. Doc. #2; docket generally.

Trustee administered the estate and made disbursements totaling \$767,006.00. Doc. #151. The Final Report was filed on December 15, 2022 and the clerk issued an *Order Fixing Deadline for Filing Objections to Trustee's Final Report and Application for Final Compensation and/or Reimbursement of Expenses and Notice Thereof*, which fixed a 21-day deadline to object to the Final Report. Docs. ##149-50. No party in interest objected.

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all

moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims.

11 U.S.C. § 326(a). Here, Trustee has requested:

- i. \$1,250.00 (25%) of the first \$5,000.00;
- ii. \$4,500.00 (10%) of the next \$45,000.00; and
- iii. \$35,850.30 (5%) of the next \$717,006.00.

Doc. #151, at 3; *Ex. A*, Doc. #160. These percentages comply with the restrictions imposed by § 326(a) with respect to the total disbursements of \$767,006.00, totaling **\$41,600.30**. Trustee also requests reimbursement of **\$757.80** in expenses:

Copies (350 @ \$0.17)	\$59.50
Postage	+ \$1.80
Lock change	+ \$226.50
Snow removal	+ \$470.00
Total Costs	= \$757.80

Ibid. These combined fees and expenses total **\$42,358.10**.

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Trustee's services included, but were not limited to: (1) conducting the meeting of creditors; (2) employing professionals (JMV-1; DMG-1; DMG-2; RTW-1); (3) selling real property, compensating professionals (DMG-3; RTW-2; DMG-7; DMG-10), and seek relief to pay additional compensation to a professional (DMG-9); (4) obtaining extension of time to object to Debtor's discharge (DMG-4); (5) obtaining authority to pay administrative expenses (DMG-6); (6) reviewing and reconciling financial records and administering the estate; and (7) preparing and filing the Final Report and this fee application (JMV-2). Docs. ##159-60. The court finds Trustee's services and expenses actual, reasonable, and necessary to the estate.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be awarded \$42,358.10 as final compensation pursuant to 11 U.S.C. §§ 326, 330 provided that Trustee files an amended certificate of service to include an official version of the Clerk's Attachment 6B1 matrix. Otherwise, the motion will be DENIED WITHOUT PREJUDICE.

¹ See Official Certificate of Service Form Information on the court's website, <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited Feb. 1, 2023).

4. [22-11747](#)-B-7 **IN RE: COURTNEY CLERICO**
[PK-2](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS NATIONAL BANK
1-18-2023 [\[24\]](#)

COURTNEY CLERICO/MV
PATRICK KAVANAGH/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 Moving Party shall submit a proposed order after hearing.

Courtney Anne Clerico ("Debtor") seeks to avoid a judicial lien in favor of American Express National Bank ("Creditor") in the sum of \$11,075.58 and encumbering residential real property located at 2458 C. Street, Bakersfield, CA 93301 ("Property").² Doc. #24.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion.

This motion was filed and served 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.

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 debtor's 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). § 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), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered in favor of Creditor against Debtor and Claudia Molfino Fua aka Claudia Maureen Fua aka CM Fua aka Claudia Mafinofua in the amount of \$11,510.58 on August 17, 2021. *Ex. D*, Doc. #27. The abstract of judgment was issued on September 2, 2021 and was recorded in Kern County on that same date. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #26.

As of the petition date, Property had an approximate value of \$280,000.00. *Sched. A/B*, Doc. #1. Property was encumbered by a deed of trust in favor of Platinum Home/LoanCase in the amount of \$174,271.00. *Sched. D*, *id.* Debtor claimed a homestead exemption in Property in the amount of \$185,000.00 pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C*, *id.*

Strict application of the § 522(f)(2) formula with respect to Creditor's lien is as follows:

Amount of judgment lien	\$11,510.58
Total amount of unavoidable liens	+ \$174,271.00
Debtor's claimed exemption in Property	+ \$185,000.00
<i>Sum</i>	= \$370,781.58
Debtor's claimed value of interest absent liens	- \$280,000.00
Extent lien impairs exemption	= \$90,781.58

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	\$280,000.00
Total amount of unavoidable liens	- \$174,271.00
Homestead exemption	- \$185,000.00
Remaining equity for judicial liens	= (\$79,271.00)
Creditor's judicial lien	- \$11,510.58
Extent Debtor's exemption impaired	= (\$90,781.58)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the 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 § 522(f)(1). This motion will be GRANTED. The proposed order shall state that the lien is avoided from the subject Property only and include a copy of the abstract of judgment attached as an exhibit.

² Debtor complied with Fed. R. Bankr. P. 7004(h) and (i) by serving the motion and supporting documents via certified mail on Creditor's president, CEO, or person authorized to accept certified mail on January 18 and 19, 2023. Docs. #29; #32.

5. [20-11853](#)-B-7 **IN RE: EFRAIN BARAJAS AND YUANNA GARCIA**
[DMG-2](#)

MOTION TO AVOID LIEN OF NOBLE FEDERAL CREDIT UNION
1-10-2023 [[27](#)]

YUANNA GARCIA/MV
D. GARDNER/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.

Efrain Barajas and Yuanna Kim Garcia (collectively "Debtors") seek to avoid a judicial lien in favor of Noble Federal Credit Union ("Creditor") in the sum of \$29,114.10 and encumbering residential real property located at 4809 Encore Court, Bakersfield, California ("Property").³ Doc. #27.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, a judgment lien was entered against joint debtor Efrain Barajas in favor of Creditor in the amount of \$29,114.10 on December 31, 2019.

Ex. A, Doc. #30. The abstract of judgment was issued on January 10, 2020 and was recorded in Kern County on January 23, 2020. *Id.* That lien attached to Debtors' interest in Property. *Id.*; Doc. #29.

As of the petition date, Property had an approximate value of \$239,093.00. *Id.*; *Sched. A/B*, Doc. #1. Property was encumbered by a deed of trust in favor of New Rez Mortgage dba Shellpoint Mortgage in the amount of \$162,095.00. *Sched. D*, *id.* Debtors claimed a homestead exemption in Property in the amount of \$175,000.00 pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Am. Sched. C*, Doc. #24.

Strict application of the § 522(f)(2) formula with respect to Creditor's lien is as follows:

Amount of judgment lien	\$29,114.10
Total amount of unavoidable liens	+ \$162,095.00
Debtors' claimed exemption in Property	+ \$175,000.00
<i>Sum</i>	= \$366,209.10
Debtors' claimed value of interest absent liens	- \$239,093.00
Extent lien impairs exemption	= \$127,116.10

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	\$239,093.00
Total amount of unavoidable liens	- \$162,095.00
Homestead exemption	- \$175,000.00
Remaining equity for judicial liens	= (\$98,002.00)
Creditor's judicial lien	- \$29,114.10
Extent Debtors' exemption impaired	= (\$127,116.10)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall state that the lien is avoided from the subject Property only and include a copy of the abstract of judgment attached as an exhibit.

³ Debtors complied with Fed. R. Bankr. P. 7004(h) and (i) by serving the motion and supporting documents via certified mail on Susan Ryan, Creditor's CEO, on January 10, 2023. Doc. #31.

6. [22-11464](#)-B-7 **IN RE: TERRENCE/FERN SAMMON**
[JMV-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
1-7-2023 [\[23\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue an order.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") seeks dismissal of this case for the debtors' failure to appear and testify at the § 341(a) meeting of creditors held on January 6, 2023. Doc. #23.

Terrence Roger Sammon and Fern Elaine Sammon (collectively "Debtors"), through their attorney Robert S. Williams, timely filed written opposition. Doc. #26. Debtors have filed a notice of incapacity and motion for substitution, which is the subject of matter #7 below. RSW-2. Debtors did not explain their failure to attend the meeting or include the reasons this case should not be dismissed. However, in that motion, Debtors indicate that joint debtor Terrence Roger Sammon became incapacitated after having a stroke after this case was filed but before the October 7, 2022 initial meeting of creditors. Docs. ##28-29.

Notwithstanding Debtors' failure to include those reasons in the opposition, this motion to dismiss will be CONDITIONALLY DENIED.

Debtors, or joint debtor Fern Elaine Sammon on behalf of Terrence Roger Sammon, shall attend the meeting of creditors rescheduled for February 10, 2023 at 10:00 a.m. See, Doc. #24. If the joint debtor fails to appear at testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. trustee to object to Debtors' discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

7. [22-11464](#)-B-7 **IN RE: TERRENCE/FERN SAMMON**
[RSW-2](#)

MOTION TO SUBSTITUTE PARTY, AS TO DEBTOR
1-20-2023 [\[28\]](#)

FERN SAMMON/MV
ROBERT WILLIAMS/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 Moving Party shall submit a proposed order after hearing.

Terrence Roger Sammon and Fern Elaine Sammon (collectively "Debtors") move for an order substituting Fern Elaine Sammon as the representative for Terrence Roger Sammon pursuant to Local Rule of Practice ("LBR") 1016-1. Doc. #28.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served on at least 21 days' notice pursuant to 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.

Upon the death or incapacity of a debtor in a bankruptcy case that has not closed, LBR 1016-1(b) permits the filing of a single omnibus motion under Fed. R. Civ. P. 18(a) (Fed. R. Bankr. P. 7018, 9014(c)) for, among others, the following claims of relief:

- 1) Substitution as the representative for or successor to the legally incompetent debtor in the bankruptcy case pursuant to Fed. R. Civ. P. 25(a); and
- 2) Waiver of the post-petition education requirement for entry of discharge under § 727(a)(11).

Pursuant to LBR 1016-1, joint debtor Fern Elaine Sammon requests to be substituted in as the representative for Terrence Roger Sammon.
Doc. #28.

Joint debtor Fern Elaine Sammon declares that her husband, Terrence Roger Sammon, had a stroke after this case was filed but before the initial meeting of creditors was held on October 7, 2022. Doc. #29. As a result, Mr. Sammon was unable to appear and testify at that initial

meeting. *Id.* Ms. Sammon declares that Mr. Sammon has been and is still unable to respond to questions. Further, since he contracted COVID-19, Mr. Sammon has been under quarantine and Ms. Sammon is only able to communicate with him by telephone. However, he is still unable to understand and respond to questions and his doctors say he may never recover. *Id.*

Since the Debtors have been married for seven years, Ms. Sammon is familiar with their assets, debts, and financial circumstances. Ms. Sammon wishes to represent Mr. Sammon and answer questions on his behalf at the continued meeting of creditors scheduled for February 10, 2023 at 10:00 a.m.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion and appoint Fern Elaine Sammon as the representative for Terrence Roger Sammon because he is incapacitated and legally incompetent.

8. [22-11769](#)-B-7 **IN RE: PREMIER RAIL SERVICES, INC.**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-14-2022 [\[26\]](#)

FORD MOTOR CREDIT COMPANY LLC/MV
D. GARDNER/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.

Ford Motor Credit Company, LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Ford Ranger ("Vehicle"). Doc. #26. Premier Rail Services, Inc. ("Debtor") did not oppose.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief

requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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).

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least two (2) post-petition payments totaling \$1,315.84. Movant has produced evidence that Debtor is indebted to Movant in the amount of \$18,715.73. Doc. #30.

The court also finds that the Debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. *Id.* The Vehicle is valued at \$12,000.00 and Debtor owes \$18,715.73. Doc. #26, #29.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least two (2) payments to Movant and the Vehicle is a depreciating asset. No other relief is awarded.

9. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[KJM-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-31-2023 [\[708\]](#)

M&T CAPITAL AND LEASING CORPORATION/MV
LEONARD WELSH/ATTY. FOR DBT.
KEVIN MCELENEY/ATTY. FOR MV.
OST 1/31/23

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 Moving Party shall
submit a proposed order after hearing.

M&T Capital and Leasing Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) to dispose of nineteen (19) units of equipment consisting of various trucks and trailers ("Recovered Equipment"). Doc. #708. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3).

Written opposition was not required and may be presented at the hearing. In the absence of opposition at the hearing, this motion will be GRANTED.

This motion was filed and served with an order shortening time pursuant to LBR 9014-1(f)(3). Consequently, the creditors, the trustee, the U.S. Trustee, and all other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

On December 14, 2022, the court granted Movant's request for stay relief consistent with a Stipulation between Debtor and Movant in which Debtor agreed to allow Movant to take possession of forty-one (41) units of equipment and Movant agreed not to dispose of the equipment without further order of this court. Docs. #177; #202; #289. Since that order was entered, Movant has only been able to recover nineteen (19) units—the Recovered Equipment—but Movant will continue to diligently search for and recover the remaining units of equipment.

Movant now requests further stay relief to dispose of the Recovered Equipment. Doc. #708. The motion claims that Debtor and Trustee have consented to the disposition of the Recovered Equipment. *Id.*

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 Debtor is six (6) payments past due in the amount of \$686,482.00 and the Recovered Equipment consists of depreciating assets. Doc. #711.

This matter will be called and proceed as scheduled to inquire whether any party in interest opposes Movant's request for additional relief from the automatic stay. If not, this motion may be GRANTED.

If granted, the 14-day stay of Rule 4001(a)(3) will be ordered waived due to the ongoing and increasing costs of storing and maintaining the Recovered Equipment.

10. [22-11926](#)-B-7 **IN RE: ALBERT GRIMES**
[JMV-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
12-9-2022 [\[15\]](#)

WILLIAM EDWARDS/ATTY. FOR DBT.
LATE FILED

NO RULING.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on December 9, 2022. Doc. #15.

Albert Grimes ("Debtor") filed form opposition, but it was not timely. Doc. #24. Opposition to Trustee's motion was due not later than January 25, 2023. Debtor's opposition was filed on February 1, 2023, which is seven (7) days late. Debtor's attorney, William Edwards, indicates that Debtor was hospitalized and therefore unable to attend the meeting on December 9, 2022.

This matter will be called as scheduled to inquire why Debtors' opposition was not timely filed by January 25, 2023. If satisfactorily explained, this motion to dismiss may be CONDITIONALLY DENIED.

If conditionally denied, Debtor shall attend the meeting of creditors rescheduled for February 10, 2023 at 1:30 p.m. See, Doc. #16. If the Debtor fails to appear at testify at the rescheduled meeting, Trustee

may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

11:30 AM

1. [22-11817](#)-B-7 **IN RE: RAYMOND/LAURA NOEL**

REAFFIRMATION AGREEMENT WITH VALLEY STRONG CREDIT UNION
12-15-2022 [\[24\]](#)

R. BELL/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between debtors Raymond Ralph Noel and Laura Vanessa Noel and Valley Strong Credit Union for a 2015 GMC Yukon was filed on December 15, 2022. Doc. #24.

The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when entering into the agreement. The form of the reaffirmation agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtors' attorney with the appropriate attestations. *Id.* Pursuant to § 524(d), the court need not approve the agreement.

2. [22-11893](#)-B-7 **IN RE: LETICIA ARROYO**

REAFFIRMATION AGREEMENT WITH SAFE 1 CREDIT UNION
12-20-2022 [\[13\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between debtor Leticia Arroyo and Safe 1 Credit Union for a 2107 Chevrolet Silverado was filed on December 20, 2022. Doc. #13.

The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when entering into the agreement. The form of the reaffirmation agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtors' attorney with the appropriate attestations. *Id.* Pursuant to § 524(d), the court need not approve the agreement.

3. [22-11895](#)-B-7 **IN RE: KEITH/TERRICA BRYAN**

REAFFIRMATION AGREEMENT WITH HYUNDAI CAPITAL AMERICA
12-29-2022 [\[14\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between debtors Keith Neil Bryan and Terrica Ashley Bryan and Hyundai Capital America dba Hyundai Motor Finance for a 2021 Hyundai Elantra was filed on December 29, 2022. Doc. #14.

The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when entering into the agreement. The form of the reaffirmation agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtors' attorney with the appropriate attestations. *Id.* Pursuant to § 524(d), the court need not approve the agreement.