



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: February, Thursday 9, 2023
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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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [22-12106](#)-A-13 **IN RE: CINDY JENNINGS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-27-2022 [[11](#)]

DISMISSED 1/3/23

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on January 3, 2023. Doc. #13. The order to show cause will be dropped as moot. No appearance is necessary.

2. [19-12709](#)-A-13 **IN RE: HANS YEAGER**
[MHM-3](#)

MOTION TO DISMISS CASE
1-4-2023 [[78](#)]

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

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on February 1, 2023. Doc. #85.

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

MOTION TO DISMISS CASE
1-4-2023 [[27](#)]

MICHAEL MEYER/MV
DISMISSED 1/9/23

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 January 9, 2023. Doc. #31. Therefore, this motion will be DENIED AS MOOT.

4. [22-11714](#)-A-13 **IN RE: FERNANDO/MARIA GARIBAY**

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SOLAR MOSAIC LLC
11-28-2022 [\[14\]](#)

SOLAR MOSAIC, INC./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
GARRY MASTERSON/ATTY. FOR MV.

NO RULING.

5. [22-11714](#)-A-13 **IN RE: FERNANDO/MARIA GARIBAY**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
1-17-2023 [\[30\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This objection 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. While opposition can be raised at the hearing, the court intends to overrule 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.

As an informative matter, the certificate of service filed in connection with this objection to confirmation (Doc. #32) was filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) instead of being printed prior to filing with the court. The version that was filed with the court can be altered because it is still the fillable version. In the future, the declarant should print the completed certificate of service form prior to filing and not file the fillable version.

Fernando Hortencio Garibay and Maria Urrea Garibay (collectively, "Debtors"), the debtors in this chapter 13 case, filed their chapter 13 plan ("Plan") on October 5, 2022. Doc. #3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan on the grounds that the debtors have not filed a motion to value the collateral held by Solar Mosaic LLC ("Creditor") as required by LBR 3015-1(i). Doc. #30.

On January 26, 2023, Debtors filed a motion to value Creditor's collateral. Doc. #36. That motion is set for hearing on this calendar, matter #6, below. Doc. #37.

Because Debtors have filed a motion to value Creditor's collateral, and that is the only ground for Trustee's objection to confirmation of the Plan, the objection will be OVERRULED.

6. [22-11714](#)-A-13 **IN RE: FERNANDO/MARIA GARIBAY**
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF SOLAR MOSAIC INC.
1-26-2023 [\[36\]](#)

MARIA GARIBAY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to a date to be determined at the hearing.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the 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. Though not required, secured creditor Solar Mosaic, LLC ("Creditor") filed written opposition on February 2, 2023. Doc. #43. Further opposition may be presented at the hearing. This matter will proceed as scheduled.

As a procedural matter, the certificate of service filed in connection with this motion to value collateral shows that the parties involved were only served electronically pursuant to Federal Rule of Civil Procedure 5 and Federal Rules of Bankruptcy Procedure ("Rule") 7005, 9036 Service. Doc. #40. However, the court interprets Rule 9014(b) to require service of a motion to value collateral to be made on Creditor pursuant to Rule 7004. Rule 7004(b)(3) provides that service upon a domestic corporation be made "by mailing a copy of the summons and complaint to . . . any other agent authorized by appointment or law to receive service[.]" Here, Creditor has appeared in this bankruptcy case through counsel. See Doc. #14. While Creditor can be served through counsel, counsel should have been served by mail, not electronically. Rule 9036(e) does not permit electronic service when any paper is required to be served in accordance with Rule 7004. However, in light of Creditor's written opposition to the motion and the failure of Creditor to object to improper service of the motion in its written opposition, the court is inclined to find that Creditor has waived improper service of the motion.

As an informative matter, the certificate of service filed in connection with the response to the motion to value collateral (Doc. #40) shows that parties were properly served according to Rule 7004 Service and Rule 5 and Rules 7005, 9036 Service. However, in Sections 6 and 7, the declarant incorrectly checked boxes related to Section 6B2 on the form, as it does not appear that declarant served any entities by U.S. mail pursuant to Rule 5 and Rules 7005, 9036 Service. Moreover, there is no Attachment 6B2 attached to the certificate of service.

Fernando Hortencio Garibay and Maria Urrea Garibay (collectively, "Debtors"), the debtors in this chapter 13 case, move the court for an order valuing

Debtors' solar panel system ("Property"), which is the collateral of Creditor. Doc. #36; Decl. of Fernando Hortencio Garibay, Doc. #38.

11 U.S.C. § 1325(a) (*) (the hanging paragraph) permits the debtor to value personal property other than a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 1-year period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtors asserts the Property was purchased more than one year before the filing of this case and that the loan is a purchase money security interest. Garibay Decl., Doc. #38. Debtors assert a replacement value of the Property of \$10,000.00 and ask the court for an order valuing the Property at \$10,000.00. Id. Creditor opposes the motion and seeks time to obtain an appraisal of the Property. Doc. #43.

The court is inclined to continue this matter to a date to be determined at the hearing to allow Creditor to obtain an appraisal of the Property. At the hearing, the parties should be prepared to discuss the timing of the continued motion and any other deadlines the parties want the court to set related to this motion.

7. [22-10615](#)-A-13 **IN RE: TINA CISNEROS**
[PK-1](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
12-20-2022 [\[35\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered

and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As an informative matter, the certificate of service filed in connection with this motion for compensation (Doc. #37) used an older version of the court's Official Certificate of Service form (EDC Form 7-005, New 06/2022) instead of the most updated version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

As a further informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant failed to mark that service was effectuated by Rule 5 and Rules 7005, 9036 Service by checking the 6B box. Doc. #37. Further, the declarant attached a list labeled Attachment 6B2 but failed to check the box under Section 6B2 to show that they were serving parties by U.S. mail with a list other than the clerk's matrix of creditors.

Patrick Kavanagh ("Movant"), counsel for Tina Marie Cisneros ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$5,130.00 limited to \$4,000.00 for services rendered from February 7, 2022 through November 16, 2022. Doc. #35. Debtor's confirmed plan provides, in addition to \$750.00 paid prior to filing the case, for \$3,210.00 in attorney's fees to be paid through the plan. Plan, Doc. #3. Debtor consents to the amount requested in Movant's application. Doc. #35.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's plan; (2) preparing for and appearing at 341 meeting of creditors; (3) communicating with Debtor's creditors and the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Exs. A, B & C, Doc. #35. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$4,000.00 to be paid in a manner consistent with the terms of the confirmed plan.

8. [19-10719](#)-A-13 **IN RE: JAMESON/DAYNA SHEPHERD**
[PK-2](#)

MOTION TO MODIFY PLAN
12-6-2022 [\[59\]](#)

DAYNA SHEPHERD/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

The debtors filed a motion for confirmation of a second modified plan (PK-3), matter #9, below. Doc. ##68-74. Therefore, this motion will be DROPPED AS MOOT.

9. [19-10719](#)-A-13 **IN RE: JAMESON/DAYNA SHEPHERD**
[PK-3](#)

MOTION TO MODIFY PLAN
12-14-2022 [\[68\]](#)

DAYNA SHEPHERD/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

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

ORDER: The court will issue an order.

As a procedural matter, the Clerk's Matrix of Creditors used by the moving party to serve notice of the motion does not comply with Local Rule of Practice ("LBR") 7005-1(d), which requires that the Clerk's Matrix of Creditors used to serve a notice be downloaded not more than 7 days prior to the date notice is served. Here, the moving party served notice of the motion on December 14, 2022 using a Clerk's Matrix of Creditors that was generated on December 6, 2022. Doc. #74.

This motion was set for hearing on at least 35 days' notice as required by LBR 3015-1(d)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #78. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than February 23, 2023. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Trustee shall file and serve a reply, if any, by March 2, 2023.

If the debtors elect 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 March 2, 2023. If the debtors do 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.

10. [22-11919](#)-A-13 **IN RE: DAYANA GONZALEZ DELGADO**
[CJK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
12-20-2022 [\[21\]](#)

BANK OF AMERICA, N.A./MV
D. GARDNER/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

11. [22-11919](#)-A-13 **IN RE: DAYANA GONZALEZ DELGADO**
[MHM-1](#)

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

MICHAEL MEYER/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed an amended Schedule C on January 26, 2023, amending the exemption that is the subject of the exemption. Doc. #30.

12. [22-11919](#)-A-13 **IN RE: DAYANA GONZALEZ DELGADO**
[MHM-2](#)

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

D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1
12-21-2022 [\[88\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted with clarifying language in order.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing with counsel for the opposing party to approve as to form.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). U.S. Bank Trust National Association ("U.S. Bank"), not in its individual capacity but solely as owner trustee for RCF 2 Acquisition Trust c/o U.S. Bank Trust National Association, timely filed written opposition on January 12, 2023. Doc. #93. The failure of the U.S. Trustee, the debtors, 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 non-responding parties in interest are entered.

Michael H. Meyer ("Trustee"), the chapter 13 trustee, moves the court for a determination of final cure pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 3002.1. Doc. #88. By the motion, Trustee seeks an order providing that: (1) the debtors have cured the pre-petition default on their loan with U.S. Bank; and (2) the debtors are current on their post-petition mortgage payment to U.S. Bank for the months of September 2017 through August 2022. Id.

On November 9, 2022, Trustee filed and served a Notice of Final Cure Payment pursuant to Rule 3002.1(f) ("Notice"). Doc. #81. On November 30, 2022, U.S. Bank filed a response disagreeing with the Notice and indicating that there remained \$2,050.60 in outstanding in post-petition fees. See doc(10). Trustee then filed this motion. Doc. #88.

In response to this motion, U.S. Bank now asserts that only \$600.00 remains in outstanding post-petition fees. Doc. #93. U.S. Bank has determined that the debtors' account is current through December 2022, other than the \$600.00 in outstanding post-petition fees related to post-petition fees as set forth in the Notice of Postpetition Mortgage Fees, Expenses, and Charges filed in this bankruptcy case on January 30, 2018. See doc(3). Per the Notice, there are \$1,200.00 in postpetition fees, expenses and charges that are recoverable under Rule 3002.1(c) that have not been paid by Trustee. Doc. #81.

Having reviewed the pleadings in detail, the court is inclined to enter an order providing that: (1) the debtors have cured the pre-petition default on their loan with U.S. Bank; (2) the debtors are current on their post-petition mortgage payment to U.S. Bank for the months of September 2017 through December 2022; and (3) \$600.00 remains in unpaid and outstanding post-petition fees. Trustee shall prepare the form of order with counsel for U.S. Bank to

approve the proposed order as to form before the proposed order is submitted to the court.

14. [22-11820](#)-A-13 **IN RE: GWENDOLYN PICKENS**
[MHM-2](#)

MOTION TO DISMISS CASE
12-23-2022 [\[20\]](#)

MICHAEL MEYER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Granted in part; the case will be converted.

ORDER: The court will issue the order.

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

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

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because the debtor has failed to make all payments due under the plan (11 U.S.C. § 1307(c)(4)). The debtor is delinquent in the amount of \$4,000.00. Doc. #20. Before this hearing, another payment in that same amount will also come due. Id. The debtor did not oppose.

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

The debtor has opted for 704 exemptions. There currently is a liquidation amount of \$28,750.92 after trustee's compensation. Decl. of Michael H. Meyer, Doc. #22. This liquidation amount is comprised of equity in two of the debtor's vehicles, a 2002 tax refund, and insurance proceeds. Id.; Schedules A/B, C

and D. Because there appears to be non-exempt equity in the debtor's assets to be realized for the benefit of the estate, conversion, rather than dismissal, is in the best interests of creditors and the estate.

Accordingly, the motion will be GRANTED IN PART, and the case will be converted.

15. [22-11635](#)-A-13 **IN RE: EMELITA BROWN**
[MHM-2](#)

MOTION TO DISMISS CASE
12-23-2022 [[29](#)]

MICHAEL MEYER/MV
JOSHUA STERNBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

16. [22-11635](#)-A-13 **IN RE: EMELITA BROWN**
[MHM-2](#)

MOTION TO CONFIRM PLAN
12-29-2022 [[33](#)]

EMELITA BROWN/MV
JOSHUA STERNBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

As a procedural matter, the motion and supporting papers do not comply with Local Rule of Practice ("LBR") 9014-1(c). Counsel for the debtor used the same Docket Control Number ("DCN") that was used by the chapter 13 trustee in his motion to dismiss, matter #15 on this calendar. While the motion to confirm may have been filed in response to the chapter 13 trustee's motion to dismiss the debtor's bankruptcy case, the debtor's motion to confirm a chapter 13 plan is a separate motion and should have been assigned its own DCN as required by LBR 9014-1(c)(1). The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form in connection with the motion to confirm plan. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #39. However, the declarant attached the correct documents required to serve by U.S. mail the parties in the Clerk's Matrix of Creditors and the parties who have filed a Request for Special Notice but failed to check box 6B(2)(a) and box 6B(2)(b).

17. [22-12042](#)-A-13 **IN RE: ANNA NEGRETE**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-14-2022 [\[9\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

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

18. [22-12042](#)-A-13 **IN RE: ANNA NEGRETE**
[MHM-1](#)

MOTION FOR ORDER AUTHORIZING DEBTOR TO PROVIDE ADEQUATE
ASSURANCE OF PAYMENT TO UTILITY SERVICE PROVIDER
12-20-2022 [\[16\]](#)

ANNA NEGRETE/MV
ANNA NEGRETE/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court is granting the trustee's Motion to Dismiss [MHM-2] below, therefore this Motion for Order Authorizing Debtor to Provide Adequate Assurance of Payment to Utility Service Provider [MHM-1] will be DENIED AS MOOT.

19. [22-12042](#)-A-13 **IN RE: ANNA NEGRETE**
[MHM-2](#)

MOTION TO DISMISS CASE
1-12-2023 [\[20\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

As an informative matter, the certificate of service filed in connection with the motion to dismiss (Doc. #23) was filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) instead of being printed prior to filing with the court. The version that was filed with the court can be altered because it is still the fillable version. In the future, the declarant should print the completed certificate of service form prior to filing it with the court and not file the fillable version.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #20. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to appear at the scheduled § 341 meeting of creditors and provide Trustee with any requested documents. Id. On December 30, 2022, the Trustee's office uploaded to bkdcs.us and contacted the debtor by way of email to inform her of a request for additional documentation. Id. The additional documents Trustee requested, and has not received, include the documents related to the following: (a) lawsuit against LA County and DCFS; (b) contribution income from third parties; (c) gambling income; (d) life insurance policies; and (e) secured loan documents, specifically auto loan contracts and the most recent statements. Id. As a separate ground, Trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(4) because the debtor has failed to make all required payments due under the plan. As of January 12, 2023, payments are delinquent in the amount of \$1,400.00. Doc. #20. The debtor did not oppose.

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

A review of the debtor's Schedules A/B and D shows that the debtor's personal property is encumbered. The debtor claims a homestead exemption in the real property. Should the debtor choose to amend Schedule C exemptions, there would remain non-exempt equity that may be available for the benefit of unsecured creditors. However, because the debtor has failed to appear at the meeting of creditors, dismissal rather than conversion is appropriate.

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

20. [18-14853](#)-A-13 **IN RE: JERRICK/SANDRA BLOCK**
[RSW-6](#)

CONTINUED MOTION TO MODIFY PLAN
10-18-2022 [\[106\]](#)

SANDRA BLOCK/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

21. [22-11963](#)-A-13 **IN RE: JACK JOHNSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-23-2023 [\[45\]](#)

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

The court is granting the trustee's Motion to Dismiss [MHM-2] below, therefore this Order to Show Cause for Failure to Pay Fees will be DROPPED AS MOOT.

22. [22-11963](#)-A-13 **IN RE: JACK JOHNSON**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-20-2022 [\[23\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

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

MOTION TO DISMISS CASE
1-12-2023 [\[41\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

As an informative matter, the certificate of service filed in connection with the motion to dismiss (Doc. #44) was filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) instead of being printed prior to filing with the court. The version that was filed with the court can be altered because it is still the fillable version. In the future, the declarant should print the completed certificate of service form prior to filing it with the court and not file the fillable version.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #41. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (a) appear at the scheduled § 341 meeting of creditors; (b) provide Trustee with any requested documents; (c) file complete and accurate schedules, statements, and plan; and (d) set a plan for hearing with notice to creditors. Id. As a separate ground, Trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(4) because the debtor has failed to make all required payments due under the plan. Id. As of January 12, 2023, payments are delinquent in the amount of \$150.00. Id. The debtor did not oppose.

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

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

A review of the debtor's Schedules A/B and D shows that the debtor's personal property is encumbered. The debtor claims a homestead exemption in the real property. Should the debtor choose to amend Schedule C exemptions, there would remain non-exempt equity that may be available for the benefit of unsecured creditors. However, because the debtor has failed to appear at the meeting of creditors, dismissal rather than conversion is appropriate.

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

24. [19-11865](#)-A-13 **IN RE: MANUEL DURAN**
[RSW-2](#)

MOTION TO MODIFY PLAN
12-14-2022 [\[74\]](#)

MANUEL DURAN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

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

ORDER: The court will issue an order.

As an informative matter, the certificate of service filed in connection with this objection to the motion to modify plan (Doc. #83) was filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) instead of being printed prior to filing with the court. The version that was filed with the court can be altered because it is still the fillable version. In the future, the declarant should print the completed certificate of service form prior to filing and not file the fillable version.

This motion was set for hearing on at least 35 days' notice as required by LBR 3015-1(d)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #82. 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 23, 2023. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by March 2, 2023.

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 March 2, 2023. 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.

25. [22-11281](#)-A-13 **IN RE: DWAYNE HAUGHTON**
[EAT-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
10-25-2022 [\[49\]](#)

LAKEVIEW LOAN SERVICING, LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
DARLENE VIGIL/ATTY. FOR MV.

NO RULING.

26. [22-11281](#)-A-13 **IN RE: DWAYNE HAUGHTON**
[RSW-1](#)

CONTINUED MOTION TO CONFIRM PLAN
11-17-2022 [\[71\]](#)

DWAYNE HAUGHTON/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

27. [22-11788](#)-A-13 **IN RE: ELIZABETH HERRERA**
[MHM-1](#)

MOTION TO DISMISS CASE
1-3-2023 [\[15\]](#)

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

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the default of the debtor is entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987).

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

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors based on the debtor's failure to provide Trustee with requested documents. Doc. #15. As a separate ground, Trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(4) because the debtor has failed to make all required payments due under the plan. Id. As of January 3, 2023, payments are delinquent in the amount of \$936.00. Id. The debtor did not oppose.

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

A review of the debtor's Schedules A/B and D shows that the debtor's personal property is encumbered. The debtor claims a homestead exemption in the real property. Schedule C. Should the debtor choose to amend Schedule C exemptions, there would remain non-exempt equity that may be available for the benefit of unsecured creditors. Decl. of Michael H. Meyer, Doc. #17. Because there are minimal non-exempt assets, the court determines that dismissal rather than is in the best interest of creditors and the estate.

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

28. [21-12879](#)-A-13 **IN RE: RICHARD/MARLENE THOMAS**
[TCS-1](#)

CONTINUED MOTION TO APPROVE LOAN MODIFICATION
1-3-2023 [[22](#)]

MARLENE THOMAS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was originally set for hearing for February 2, 2023 on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The court continued the hearing from February 2, 2023 to February 9, 2023 to permit the moving party to file an amended certificate of service showing the parties who were served with the documents listed in Section 4 of the certificate of service form. On February 7, 2023, an amended certificate of service was filed showing that the moving party properly served the motion and related papers on

January 3, 2023. Doc. #34. 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.

Richard Thomas and Marlene Thomas (collectively "Debtors"), the chapter 13 debtors in this case, move the court for an order authorizing Debtors to modify their existing mortgage. Doc. #22. Debtors seek to modify the mortgage on their primary residence located at 42762 Road 415 Coarsegold, CA 93614 ("Residence"). Id. The modification will capitalize the arrearage and change the total due on the mortgage to \$154,585.17 as of November 2022 and the interest rate will be 4.375% resulting in a payment of \$907.03 for 40 years. Decl. of Richard Thomas, Doc. #24. After the modification, Debtors will be fully current on their loan. Id. Debtors will make all of their mortgage payments in class 4 under their plan. Motion, Doc. #22. The monthly payment will not exceed \$2,000 and will be paid outside of Debtors' chapter 13 plan. Thomas Decl. at ¶ 10 & ¶ 13.

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

There is no indication that Debtors are not current on their chapter 13 plan payments or that the chapter 13 plan is in default. Debtors' Schedules I and J demonstrate an ability to pay future plan payments, projected living expenses, and the modified debt. The modified debt is a single loan incurred only to modify the existing debt encumbering Debtors' Residence. The only security for the modification will be Debtors' Residence.

Accordingly, the motion is GRANTED. Debtors are authorized, but not required, to modify the existing mortgage in a manner consistent with the motion.

1. [21-10035](#)-A-7 **IN RE: JASWINDER BHANGOO**
[JMV-1](#)

MOTION FOR COMPENSATION FOR JEFFREY M. VETTER, CHAPTER 7 TRUSTEE(S)
1-12-2023 [[116](#)]

JEFFREY VETTER/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.

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

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The Notice of Hearing states that opposition to the granting of the application must be "served on the parties identified attached hereto" but fails to provide an attachment. Doc. #117.

As a further procedural matter, the Clerk's Matrix of Creditors used by the moving party to serve notice of the motion does not comply with Local Rule of Practice ("LBR") 7005-1(c), which requires that the Clerk's Matrix of Creditors used to serve a notice be downloaded not more than 7 days prior to the date notice is served. Here, the moving party served notice of the motion on January 12, 2023 using a Clerk's Matrix of Creditors that was generated on December 30, 2022. Doc. #120. Accordingly, service of notice of the motion does not comply LBR 7005-1(c). Further, the moving party served all documents on January 12, 2023 using a Clerk's Matrix of Creditors who have filed a Request for Special Notice and Clerk's Electronic Service Matrix that were generated on December 30, 2022 and do not comply with LBR 7005-1(c). The court encourages the trustee to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Jeffrey Vetter ("Trustee"), the chapter 7 trustee, requests allowance of final compensation and reimbursement for expenses for services rendered as trustee in this case. Doc. #116. Movant provided trustee services valued at \$22,236.25, and requests compensation for that amount. Doc. #116. Movant requests reimbursement for expenses in the amount of \$135.35. Doc. #116. Since being appointed to this case on January 8, 2021, Trustee (1) administered the estate, (2) employed counsel, accountant, and real estate broker, (3) disposed of estate property, (4) reviewed and reconciled financial records, and (5) prepared final filings. Exs. A, B, & C, Doc. #119.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a chapter 7 trustee. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded a chapter 7 trustee, the court shall treat such compensation as a commission, based on § 326 of the Bankruptcy Code. 11 U.S.C. § 330(a)(7). Here, Trustee demonstrates reasonable compensation in accordance with the statutory framework of § 326. Ex. A, Doc. #119. Further, the court finds Trustee's services and requested expenses were actual and necessary to the administration of this estate.

This motion is GRANTED. The court allows statutory compensation in the amount of \$22,236.25 and reimbursement for expenses in the amount of \$135.35.

2. [22-11956](#)-A-7 **IN RE: GILBERT LOPEZ**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-7-2022 [\[11\]](#)

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

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant

marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #18. However, Federal Rules of Bankruptcy Procedure 4001(a)(1) and 9014 require service of a motion for relief from stay be made pursuant to Federal Rule of Bankruptcy Procedure 7004, which was done. In Section 6, the declarant should have checked the appropriate box under Section 6A, not Section 6B.

The movant, Americredit Financial Services, Inc. DBA GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2022 Chevrolet Colorado ("Vehicle"). Doc. #11.

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 any 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 the debtor has failed to make at least one post-petition payment. Movant has produced evidence that the debtor is delinquent by at least \$782.29. Decl. of Aaron Rangel, Doc. #14.

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 the debtor is in chapter 7. The Vehicle is valued at \$30,650.00 and the debtor owes \$37,728.07. Rangel Decl., Doc. #14.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (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. According to Movant, the debtor contacted Movant on November 30, 2022 to advise of his intent to surrender the Vehicle. Doc. #11.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least one post-petition payment to Movant and the Vehicle is a depreciating asset. The debtor represented to Movant that he intends to surrender the Vehicle.

10:30 AM

1. [22-12016](#)-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
11-28-2022 [[1](#)]

D. GARDNER/ATTY. FOR DBT.

NO RULING.

2. [22-12016](#)-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
[DMG-2](#)

CONTINUED MOTION TO UTILIZE FUNDS HELD IN ESCROW
12-28-2022 [[21](#)]

FUTURE VALUE CONSTRUCTION, INC./MV
D. GARDNER/ATTY. FOR DBT.
CONT'D TO 2/15/23 PER ECF ORDER #61

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on February 1, 2023. Doc. #76.

3. [22-12016](#)-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
[DMG-3](#)

CONTINUED MOTION TO PAY
12-28-2022 [[26](#)]

FUTURE VALUE CONSTRUCTION, INC./MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on February 1, 2023. Doc. #77.

11:00 AM

1. [22-11042](#)-A-7 **IN RE: TIFFINI HUGHES**
[22-1019](#) [C AE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
9-19-2022 [[1](#)]

LABOR COMMISSIONER OF THE
STATE OF CALIFORNIA V. HUGHES
EDELMIRA DIAZ-WEAVER/ATTY. FOR PL.
AMENDED COMPLAINT CONT'D TO 4/6/23 PER ECF ORDER #33

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

DISPOSITION: Continued to April 6, 2023 at 11:00 a.m.

NO ORDER REQUIRED.

On January 26, 2023, the court issued an order continuing the status conference to April 6, 2023, at 11:00 a.m. Doc. #33.

2. [19-13783](#)-A-7 **IN RE: MARK/SUSAN CHAGOYA**
[19-1129](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-6-2020 [[40](#)]

BROWN V. CHAGOYA ET AL
JEFF BEAN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Judgment as to both defendants in this adversary proceeding was entered on February 7, 2023. Doc. #170.