



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, March 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.

To appear via zoom gov video or zoom gov telephone for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

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2. You are required to give the court 24 hours advance notice at

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Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided:

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

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

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

NO RULING.

As an informative matter, the movant did not attach a copy of the Clerk's Electronic Service Matrix applicable to this case with the court's mandatory Certificate of Service form (Doc. #86) filed in connection with the movant's declaration in reply to the chapter 13 trustee's opposition. Instead of using a copy of the Clerk's Electronic Service Matrix as required when service is made by electronic service on registered users of the court's electronic filing system under Rule 5 and Rules 7005, 9036 Service, the movant attached a custom list of names and email addresses served. In the future, the movant should attach a copy of the Clerk's Electronic Service Matrix applicable to this case instead of creating a custom list of names and email addresses served.

2. [21-12222](#)-A-13 **IN RE: JAMES/CARLA MOORE**
[RSW-1](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR
2-9-2023 [\[32\]](#)

CARLA MOORE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice 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.

Carla Jane Moore ("Movant"), the surviving spouse of James Albert Moore, Jr. ("Joint Debtor") and joint debtor in this chapter 13 case, requests the court name Movant as the successor to the deceased Joint Debtor, permit the continued administration of this chapter 13 case, and waive the § 1328 certification requirements for Joint Debtor. Doc. #32.

Upon the death of a debtor in chapter 13, Federal Rule of Bankruptcy Procedure 1016 provides that the case may be dismissed or may proceed and be concluded in the same manner, so far as possible, as though the death had not occurred upon a showing that further administration is possible and in the best interest of the parties. Joint Debtor died on June 23, 2022. Decl. of Carla Moore, Doc. #34. Movant states that she can afford to continue making the plan monthly payments since she is working and making \$20.00 an hour. Moore Decl., Doc. #34. Appointing Movant to be representative to proceed with case administration is in the best interest of the parties and creditors. No objections have been filed in response to this motion.

With respect to a waiver of Joint Debtor's certification requirements for entry of discharge under 11 U.S.C. § 1328, Joint Debtor met the post-petition financial education requirements before Joint Debtor died. Moore Decl., Doc. #34. Joint Debtor's death demonstrates an inability to provide certifications required, and the certification requirements will be waived for Joint Debtor.

Accordingly, Movant's application to be appointed representative of Joint Debtor's estate for the further administration of this bankruptcy case is GRANTED. Movant's motion to waive Joint Debtor's § 1328 certification requirements is GRANTED.

3. [22-11635](#)-A-13 **IN RE: EMELITA BROWN**
[MHM-2](#)

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

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

NO RULING.

4. [22-11635](#)-A-13 **IN RE: EMELITA BROWN**
[MHM-2](#)

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

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

NO RULING.

5. [22-12135](#)-A-13 **IN RE: KIMBERLY YONEMITSU-TODD**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
2-7-2023 [\[19\]](#)

DEUTSCHE BANK NATIONAL TRUST COMPANY/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on February 20, 2023. Doc. #33.

6. [23-10037](#)-A-13 **IN RE: DENISE SMITHEY**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-1-2023 [\[14\]](#)

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

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

DISPOSITION: Sustained.

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

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 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.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to the claims of exemption asserted by Denise Anne Smithey ("Debtor"), the chapter 13 debtor in this case, in: (1) a 2011 Lincoln Navigator in the amount of \$6,000.00 under Missouri Revised Statute ("RSMO") § 513.430.1; and (2) jewelry in the amount of \$1,000.00 under RSMO § 513.430.1(2). Tr.'s Obj., Doc. #14. Debtor did not oppose.

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. Here, Debtor filed chapter 13 bankruptcy, including bankruptcy Schedule C, on January 9, 2023. Doc. #1. Trustee timely filed this objection on February 1, 2023. Tr.'s Obj, Doc. #14.

Debtor has elected exemptions under Missouri state law. Doc. #1. "Missouri has 'opted out' of the federal scheme, thus requiring a debtor to claim only those exemptions allowed under state law or federal non-bankruptcy law." See RSMO § 513.427; In re Kuhrts, 405 B.R. 333, 334 (Bankr. W.D. Mo. 2009). "As the party objecting to the exemption, the Trustee has the burden of proof that the exemption should not be allowed." Fed. R. Bankr. P. 4003(c). Kuhrts, 405 B.R. at 334.

First, Debtor listed a 2011 Lincoln Navigator (the "Vehicle") in the amount of \$6,000.00 under RSMO § 513.430.1(5) in Debtor's Schedule A/B. Schedule A/B, Doc. #1. Under RSMO § 513.430.1(5), a debtor is entitled to claim any exemption in "any motor vehicles, not to exceed three thousand dollars in value in the aggregate." A debtor can only double the exemption under section 513.430.1(5) when both spouses file for bankruptcy. See e.g. In re Thorpe, 251 B.R. 723, 725 (Bankr. W.D. Mo. 2000) (finding that when there are multiple debtors, each debtor is entitled to claim the full amount of the exemption, and the exemptions may be "stacked" on a single asset).

Here, Trustee objects to Debtor stacking the Vehicle exemption since Debtor's spouse did not file for bankruptcy, and Trustee asserts that Debtor is limited to an exemption under RSMO § 513.430.1(5) in the amount of \$3,000.00. Tr.'s Obj, Doc. #14.

Second, Debtor exempts jewelry in the amount of \$1,000.00 under RSMO § 513.430.1(2). Schedule A/B, Doc. #1. RSMO § 513.430.1(2) allows an exemption of a wedding ring not to exceed \$1,500.00 in value and other jewelry held primarily for personal, family, household use not to exceed \$500.00 in value.

Here, Trustee disputes the jewelry exemption. Tr.'s Obj, Doc. #14. Since Debtor failed to describe the jewelry that Debtor claims as exempt under § 513.430.1(2), it is unclear whether Debtor is exceeding the statutory limit of § 513.430.1(2). Id.

Because Debtor did not file opposition to this objection to exemption, Debtor's default was entered. The court finds that Trustee has established that Debtor's exemption of \$1,000.00 in jewelry under RSMO § 513.430.1(2) should not be allowed. Trustee's objection to this exemption is sustained.

For the foregoing reasons, Trustee's objection is SUSTAINED in its entirety. Debtor's exemption in the Vehicle under RSMO § 513.430.1(5) is limited to the amount of \$3,000.00. Debtor may file an amended Schedule C if Debtor seeks to exempt a wedding ring not to exceed \$1,500.00 in value and any jewelry held primarily for personal, family, household use not to exceed \$500.00 in value.

MOTION TO CONFIRM PLAN
2-2-2023 [\[17\]](#)

DENISE SMITHEY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Creditor Lakeview Loan Servicing, LLC, its assignees and/or successors, by and through its servicing agent Nationstar Mortgage LLC ("Creditor") timely filed written opposition on February 22, 2023. Obj., Doc. #27. The failure of 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 non-responding parties in interest are entered.

As an informative matter, the certificate of service filed in connection with the opposition (Doc. #29) 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.

As a further informative matter, Creditor did not attach a copy of the Clerk's Electronic Service Matrix applicable to this case with the court's mandatory Certificate of Service form (Doc. #29) filed in connection with the opposition. Instead of using a copy of the Clerk's Electronic Service Matrix as required when service is made by electronic service on registered users of the court's electronic filing system under Rule 5 and Rules 7005, 9036 Service, Creditor attached a custom list of names and email addresses served. In the future, Creditor should attach a copy of the Clerk's Electronic Service Matrix applicable to this case instead of creating a custom list of names and email addresses served.

Denise Anne Smithey ("Debtor") filed her amended chapter 13 plan ("Plan") on February 2, 2023. Doc. #17. Creditor objects to confirmation of the Plan on the ground that the Plan fails to provide for the cure of pre-petition arrears owed to Creditor pursuant to 11 U.S.C. § 1322(b)(5). Obj., Doc. #27.

Creditor has not filed a proof of claim. To the extent Creditor seeks reclassification of its claim under the Plan, Creditor has not made the requisite showing that Creditor is entitled to such treatment. In a chapter 13 case, a creditor who seeks to participate in the distribution of the debtor's assets must file a proof of claim. Spokane Law Enf't Fed. Credit Union v. Barker (In re Barker), 839 F.3d 1189, 1195 (9th Cir. 2016).

Further, under the Plan, Creditor holds a Class 1 claim. Plan ¶ 3.07, Doc. #21. Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not the Plan is confirmed, or a proof of claim is filed. Id. Sections 3.07, 3.08 and 5.02 of the Plan are modified to provide that monthly, after payment of trustee's fees and the monthly dividend payment to Class 2 secured creditor Wells Fargo Dealer Services on the 2011 Lincoln Navigator, all available funds shall be paid to Class 1 secured creditor Lakeview Loan Servicing, LLC, toward the regular monthly mortgage payments on 2717 La Crescenta Dr., Bakersfield, CA (the "Property"). Plan ¶ 7.03, Doc. #21. If the motion to sell the Property, matter #8 on this calendar, is granted and the Property is sold, Creditor will receive full payment of arrearages from the sale proceeds.

Therefore, Creditor's objection is OVERRULED, and the motion to confirm plan is GRANTED.

8. [23-10037](#)-A-13 **IN RE: DENISE SMITHEY**
[RSW-2](#)

MOTION TO SELL
2-16-2023 [[23](#)]

DENISE SMITHEY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled for higher and better offers.

DISPOSITION: Granted consistent with the conditional non-opposition.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. While not required, creditor Lakeview Loan Servicing, LLC, its assignees and/or successors, by and through its servicing agent Nationstar Mortgage LLC ("Creditor") filed a conditional statement of non-opposition on February 28, 2023. Doc. #30. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion consistent with the conditional non-opposition. 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 the non-opposition (Doc. #31) 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.

As a further informative matter, Creditor did not attach a copy of the Clerk's Electronic Service Matrix applicable to this case with the court's mandatory Certificate of Service form (Doc. #31) filed in connection with the non-opposition. Instead of using a copy of the Clerk's Electronic Service Matrix as required when service is made by electronic service on registered users of the court's electronic filing system under Rule 5 and Rules 7005, 9036 Service, Creditor attached a custom list of names and email addresses served. In the future, Creditor should attach a copy of the Clerk's Electronic Service Matrix applicable to this case instead of creating a custom list of names and email addresses served.

Denise Anne Smithey ("Debtor") petitions the court for an order authorizing Debtor to sell real property located at 2717 La Cresenta Drive, Bakersfield, California (the "Property") to James Ganlere ("Buyer") for \$300,000.00 subject to higher and better bids at the hearing. Doc. #23. Debtor filed a voluntary chapter 13 petition on January 9, 2023. Doc. #1. Debtor's amended chapter 13 plan was filed on February 2, 2023 and provides for a 100% dividend to general unsecured creditors. Am Plan, Doc. #21.

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

This motion was properly served and noticed, and a conditional non-opposition has been filed. Pursuant to the conditional non-opposition, Creditor has no opposition to Debtor's motion so long as the lien of Creditor is paid off in full satisfaction of the debt as of the date of the closing of the sale. Doc. #30. Creditor requests that the order granting the motion include the following language:

The loan secured by a first lien on real property located at 2717 La Cresenta Drive, Bakersfield, CA 93312 will be paid in full as of the date of the closing of the sale, and the sale will be conducted through an escrow and based on a non-expired contractual payoff statement received directly from Lakeview Loan Servicing, LLC by and through its servicing agent Nationstar Mortgage, LLC.

Debtor has a fee simple ownership interest in the Property, which she inherited from David Reviea. Schedule A/B, Doc. #1. Title to the property is still in the name of David Reviea and probate is pending. Decl. of Denise Smithey, Doc. #25. Creditor holds the deed of trust and is owed approximately \$235,000.00 on the mortgage. Id.; Schedule C, Doc. #1. Debtor will share the closing costs and realtors' commissions with Buyer. Smithey Decl., Doc. #25. Costs of escrow and realtor's commissions will be split 50/50. Doc. #23. The court finds that the sale of the Property is in the best interests of the estate and will result in full payment of Debtor's confirmed chapter 13 plan.

Accordingly, this motion is GRANTED. Debtor is authorized, but not required, to sell the Property in a manner consistent with the motion and the conditional non-opposition. Doc. ##23, 30.

9. [22-12042](#)-A-13 **IN RE: ANNA NEGRETE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-3-2023 [\[24\]](#)

DISMISSED 2/9/23

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 February 9, 2023, Doc. #31. The order to show cause will be dropped as moot. No appearance is necessary.

10. [19-10854](#)-A-13 **IN RE: VIOLA REYNOLDS**
[RSW-3](#)

MOTION TO MODIFY PLAN
1-16-2023 [\[47\]](#)

VIOLA REYNOLDS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 6, 2023 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice 3015-1(d)(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. #55. 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 March 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 30, 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 30, 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.

11. [23-10161](#)-A-13 **IN RE: LIZETTE GOMEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-13-2023 [\[21\]](#)

\$313.00 FILING FEE PAID 2/15/23

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid.

12. [23-10161](#)-A-13 **IN RE: LIZETTE GOMEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
2-7-2023 [\[13\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

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 filed by Lizette Gomez ("Debtor") under 11 U.S.C. § 1307(c)(1) for unreasonable delay by Debtor that is prejudicial to creditors. Doc. #13. Specifically, Trustee asks the court to dismiss this case for:

- (1) Debtor's failure to file a complete and accurate Schedule C. [11 U.S.C § 521] and/or Fed. R. Bankr. P. 1007. Schedule C is completely blank.

- (2) Debtor's failure to file the correct form for Chapter 13 plan as provided by the Local Rule 3015-1(a) Official Local Form EDC 3-080 (rev. 11/9/18) and General Order 18-03 Order Adopting Attached Chapter 13 Plan as Official Local Form EDC 3-080. Debtor used Official Form 113.

Doc. #13. In addition, Debtor is ineligible to be a debtor in a Chapter 13 because no credit counseling certificate has been filed with the court. 11 U.S.C. §109(h); Doc. #13. Debtor did not oppose the motion.

Under 11 U.S.C. § 109(h), an individual may not be a debtor unless the debtor received credit counseling within the 180-day period ending on the petition date. 11 U.S.C. § 109(h)(1). Debtor filed for relief under chapter 13 of the Bankruptcy Code on January 30, 2023. Doc. #1. The Bankruptcy Code allows the debtor to request a waiver of the § 109(h)(1) requirement to receive credit counseling pre-petition based on exigent circumstances. 11 U.S.C. § 109(h)(3)(A). Debtor has not requested a waiver of the § 109(h)(1) requirements. However, Debtor previously filed a bankruptcy case in this court on November 30, 2022, Case No. 22-12034 ("Prior Case"). Debtor did file a credit counseling certificate in the Prior Case showing that Debtor received credit counseling on November 29, 2022. Doc. #1. The court takes judicial notice of the credit counseling certificate filed in the Prior Case. Fed. R. Evid. 201. Because Debtor received credit counseling on November 29, 2022, which is 62 days prior to the date this bankruptcy case was filed, the court determines that Debtor did receive credit counseling timely and may be a debtor in this bankruptcy case pursuant to § 109(h).

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). Debtor filed a blank Schedule C with her petition. Doc. #1. Also, Debtor failed to file a correct form for her Chapter 13 plan. There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by Debtor that is prejudicial to creditors.

A review of Debtor's Schedules A/B and D shows that Debtor's real property is encumbered. Debtor claims the federal exemptions on her Schedule C; however, California has opted out of the federal exemption scheme, so Debtor must choose one of the California exemption schemes. Should Debtor choose to amend her Schedule C exemptions, there appears to be minimal non-exempt assets, so the court determines that dismissal rather than conversion is in the best interest of creditors and the estate.

Accordingly, this motion will be GRANTED. The case will be dismissed.

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

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

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

NO RULING.

14. [22-11788](#)-A-13 **IN RE: ELIZABETH HERRERA**
[TCS-1](#)

MOTION TO VACATE DISMISSAL OF CASE
2-21-2023 [\[23\]](#)

ELIZABETH HERRERA/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DEBTOR DISMISSED: 02/09/2023
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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 as required by Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. While not required, the chapter 13 trustee ("Trustee") filed a written response on February 24, 2023. Tr's Obj., Doc. #28. Based on Trustee's opposition, the court is inclined to deny the motion. If further 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.

Elizabeth Herrera ("Debtor") moves the court for an order vacating the February 9, 2023 order dismissing Debtor's bankruptcy case. Mot., Doc. #23; Order, Doc. #20. Debtor moves under Federal Rule of Civil Procedure ("Rule") 60(b), incorporated to this proceeding by Federal Rule of Bankruptcy Procedure 9024. Doc. #23.

Debtor filed a voluntary chapter 13 petition on October 19, 2022. Doc. #1. Trustee filed a motion to dismiss on January 3, 2023 and set the matter for hearing on February 9, 2023. Doc. ##15, 16. Debtor had an opportunity to file a response to the motion to dismiss but did not file. On February 9, 2023, Debtor's case was dismissed for unreasonable delay by Debtor that is prejudicial to the creditors because Debtor failed to provide Trustee with all the documentation required by 11 U.S.C. § 521(a)(3) and (4) and for Debtor's failure to make all payments due under the plan. Doc.# 20.

Debtor moves under Rule 60(b)(1). Rule 60(b)(1) permits the court to grant relief from a final order for, *inter alia*, mistake, inadvertence, surprise, excusable neglect, or any other reason that justifies relief. Rule 60(b)(1); Doc. #23. A motion to reconsider an order is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." Kona Enters. v. Estate of Bishop, 299 F.3d 877, 890 (9th Cir. 2000); see also Berman v. Freedom Fin. Network, LLC, 30 F.4th 849 (9th Cir. 2022) (applying the standard to Rule 60(b)).

This determination is "an equitable one, taking account of all relevant circumstances surrounding the party's omission." Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993). The factors to consider include: (1) danger of prejudice to the debtor; (2) length of delay and potential impact on judicial proceedings; (3) reason for the delay, including whether it was in the movant's control; and (4) whether the party acted in good faith. Id. The court is inclined to deny the motion to vacate the dismissal order based on a consideration of the factors set forth in Pioneer.

With respect to the first Pioneer factor, denying the motion to vacate the dismissal order would not cause prejudice to Debtor. Debtor had not been in bankruptcy very long before the case was dismissed, and Debtor's chapter 13 plan had yet to be confirmed. Debtor's case was dismissed because Debtor failed to make payments under the plan and provide Trustee with all the documentation required. While there is no indication that Debtor is financially incapable of performing under the terms of the plan, every payment received by the Trustee has been received late. Tr's Obj., Doc. #28. This factor favors of denying the motion.

With respect to the second Pioneer factor, the delay between dismissal and Debtor's Rule 60(b) motion is nominal. The order dismissing Debtor's case was entered on February 9, 2023, and Debtor filed the instant motion on February 21, 2023. Doc. #23. There also would be minimal impact on judicial proceedings, since a review of the docket reveals no outstanding motions were interrupted and there are no related adversary proceedings. This factor favors vacating the dismissal order.

With respect to the third and fourth Pioneer factors, Debtor does not take full responsibility for failing to provide requested retirement documentation to Trustee timely and has yet to provide them to the Trustee. Tr's Obj, Doc. #28. As of February 24, 2023, Trustee has not received the retirement documents requested by Trustee, despite the representation by Debtor that the documents were provided to Trustee on December 8, 2022. Id.; Ex. A, Doc. #30.

Further, Debtor stated that Debtor was not able to make her payments in December due to a knee injury that caused her to lose work and use her earnings for groceries and hygiene products, and that Debtor worked double shifts in January to catch up and made delinquent payments through the TSF billing website as of February 9, 2023. Decl. of Elizabeth Herrera, Doc. #23. However, Trustee's records show that the last payment Trustee received from Debtor was received on February 10, 2023, after the case was dismissed. Tr's Obj., Doc. 28, Ex. B. Trustee asserts that it is a misrepresentation of Debtor to state she sent her last payment before the due date when in fact Debtor is merely stating the payment was sent before the court date for the Motion to Dismiss on February 9, 2023. Tr's Obj., Doc. #28. Further, Trustee states that each and every payment received by Trustee has been received late. Id. Debtor has not shown that she acted in good faith. These factors favor denying the motion.

Accordingly, the court will DENY the motion. The order filed February 9, 2023 dismissing Debtor's bankruptcy case will not be VACATED.

15. [17-12991](#)-A-13 **IN RE: TOMMY/JANET SVARE**
[RSW-5](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT CONTINUE CASE
ADMINISTRATION, SUBSTITUTE PARTY, AS TO JOINT DEBTOR
1-30-2023 [[105](#)]

JANET SVARE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice 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.

Tommy Ray Svare ("Movant"), the surviving spouse of Janet Catherine Svare ("Joint Debtor") and joint debtor in this chapter 13 case, requests the court name Movant as the successor to the deceased Joint Debtor, permit the continued administration of this chapter 13 case and waive the § 1328 certification requirements for Joint Debtor. Doc. #105.

Upon the death of a debtor in Chapter 13, Federal Rule of Bankruptcy Procedure 1016 provides that the case may be dismissed or may proceed and be concluded in the same manner, so far as possible, as though the death had not occurred upon a showing that further administration is possible and in the best interest of the parties. Joint Debtor died on August 12, 2022. Decl. of Tommy Svare, Doc. #107. Movant states that he has already finished making the plan payments. Id. Further, Movant states that he and Joint Debtor already completed the post-petition education requirement for entry of discharge. Id. Appointing Movant to be representative to proceed with case administration is in the best interest of the parties and creditors. No objections have been filed in response to this motion.

With respect to a waiver of Joint Debtor's certification requirements for entry of discharge under 11 U.S.C. § 1328, Joint Debtor met the post-petition financial education requirements before Joint Debtor died. Svare Decl., Doc. #107. Joint Debtor's death demonstrates an inability to provide the

certifications required, and the certification requirements will be waived for Joint Debtor.

Accordingly, Movant's application to be appointed representative of Joint Debtor's estate for the further administration of this bankruptcy case is GRANTED. Movant's motion to waive Joint Debtor's § 1328 certification requirements is GRANTED.

16. [19-12898](#)-A-13 **IN RE: JEFFREY VANDERNOOR**
[MHM-4](#)

MOTION TO DISMISS CASE
1-18-2023 [[182](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

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

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

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.

As an informative matter, the certificate of service filed in connection with this motion (Doc. #185) 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.

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 \$17,313.64. Doc. #182. Before this hearing, another monthly payment in the amount of \$3,216.78 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 debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to timely make payments due under the plan.

A review of the debtor's Schedules A/B and D shows that there is non-exempt equity to be liquidated for the benefit of creditors. Schedules A/B and D, Doc. #1. In addition, the order confirming the latest plan shows \$9,960.00 must be paid under the plan to priority and general unsecured creditors to meet the chapter 7 liquidation test. Doc. #124. 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.

10:00 AM

1. [22-12203](#)-A-7 **IN RE: LARRY GRAVES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-3-2023 [[19](#)]

RESPONSIVE PLEADING

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The debtor filed a motion to waive the filing fee on February 21, 2023. Doc. #24. By order entered on February 22, 2023, the court granted the debtor's motion to waive the filing fee. Doc. #26. Therefore, this order to show cause for failure to pay fees will be vacated.

2. [20-11367](#)-A-7 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
[PRG-1](#)

MOTION TO VACATE
2-2-2023 [[500](#)]

GENAUTICA OIL HOLDINGS, LP/MV
LEONARD WELSH/ATTY. FOR DBT.
PAUL GLASSMAN/ATTY. FOR MV.
CONT'D TO 4/6/23 PER ECF ORDER #506

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

DISPOSITION: Continued to April 6, 2023 at 10:00 a.m.

NO ORDER REQUIRED.

On February 23, 2023, the court issued an order continuing the hearing on the motion to vacate to April 6, 2023 at 10:00 a.m. Doc. #506.

10:30 AM

1. [23-10325](#)-A-11 **IN RE: ROBERT CHAMPAGNE**
[FW-4](#)

MOTION TO PAY PRIORITY WAGES
3-1-2023 [[39](#)]

ROBERT CHAMPAGNE/MV
PETER SAUER/ATTY. FOR DBT.

NO RULING.

11:00 AM

1. [22-10982](#)-A-7 **IN RE: RENE/ADELA GARCIA**
[22-1020](#) [CAE-1](#)

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

AGRO LABOR SERVICES, INC. ET AL V. GARCIA
VIVIANO AGUILAR/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

As an informative matter, the certificate of service filed in connection with the plaintiff's Status Conference Statement (Doc. #41) 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.