



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
HONORABLE RENÉ LASTRETO II
Wednesday, March 29, 2023
Department B – Courtroom #13
Fresno, California**

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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To appear remotely for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Procedures and Guidelines](#).
3. Parties appearing through CourtCall are encouraged to review the [CourtCall Appearance Information](#).

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screenshots" or other audio or visual copying of a hearing, is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [22-11303](#)-B-13 **IN RE: NICOLE GUERRA**
[JRL-1](#)

MOTION TO MODIFY PLAN
2-17-2023 [\[45\]](#)

NICOLE GUERRA/MV
JERRY LOWE/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.

Nicole Ranae Guerra ("Debtor") seeks an order confirming the *First Modified Chapter 13 Plan* dated February 17, 2023. Doc. #45. The 60-month, 100%-dividend plan proposes that Debtor will pay the aggregate sum of \$8,400.00 through month 7, and beginning month 8, the monthly payment will be \$755.00. Doc. #49. Debtor's *Schedules I & J* indicate receipt of \$6,241.42 in monthly net income, which is sufficient to afford the proposed plan payment. Doc. #1.

In contrast, the operative *Chapter 13 Plan* dated July 29, 2022, confirmed December 8, 2022, provides for 60 months of \$1,400.00 payments with a 100% dividend to allowed, non-priority unsecured claims. No party in interest timely filed written opposition.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

2. [22-11303](#)-B-13 **IN RE: NICOLE GUERRA**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
1-20-2023 [[37](#)]

MICHAEL MEYER/MV
JERRY LOWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

This motion was originally heard on March 1, 2023. Doc. #51.

Chapter 13 trustee Michael H. Meyer ("Trustee") moved to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay that is prejudicial to creditors and failure to make all payments due under the plan. Doc. #37.

On February 15, 2023, Nicole Renee Guerra ("Debtor") filed opposition stating that a modified plan would be filed addressing trustee's bases for his motion to dismiss. Doc. #43. Debtor subsequently filed a modified plan on February 17, 2023, which was set for hearing on March 29, 2023. Doc. #49. So, Trustee's motion was continued to March 29, 2023 to be heard in connection with Debtor's motion to modify plan.

The court intends to grant Debtor's motion to modify plan in matter #1 above. Therefore, Debtor has resolved the delinquency underlying this motion to dismiss. Accordingly, this motion to dismiss will be DENIED WITHOUT PREJUDICE.

3. [17-14809](#)-B-13 **IN RE: SUSANA GONZALEZ**
[MHM-3](#)

MOTION TO DISMISS CASE
2-17-2023 [\[52\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(6) (for failure to complete the terms of the confirmed plan). Doc #52. Susana Gonzalez ("Debtor") did not oppose.

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 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

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)(6) for failure to complete the terms of the confirmed plan.

Trustee has reviewed the schedules and determined that Debtor's significant assets—vehicles and real property—are overencumbered. Debtor claims exemptions in the remaining assets, so there is no

equity to be realized for the benefit of the estate. Therefore, dismissal, rather than conversion, best serves the interests of creditors and the estate.

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

4. [22-11410](#)-B-13 **IN RE: HOWARD/KIM CRAUSBY**
[DAB-4](#)

MOTION TO CONFIRM PLAN
2-23-2023 [[88](#)]

KIM CRAUSBY/MV
DAVID BOONE/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Howard Franke Crausby and Kim Renee Crausby (collectively "Debtors") seek an order confirming the *Third Amended Chapter 13 Plan* dated December 10, 2022. Doc. #88.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR") and Federal Rules of Bankruptcy Procedure ("Rule").

The plan was not set for hearing on at least 35 days' notice. LBR 3015-1(d)(1) requires any plan set for a confirmation hearing to comply with Rule 2002(a)(9), which requires at least 21 days' notice of the deadline to file an objection to confirmation, as well as LBR 9014-1(f)(1). To comply with both Rule 2002(a)(9) and LBR 9014-1(f)(1), parties in interest shall be served at least 35 days prior to the hearing.

This motion was filed and served on February 23, 2023 and set for hearing on March 29, 2023. Doc. #91. February 13, 2023 is 34 days before March 29, 2023, and therefore this hearing was not set on at least 35 days' notice as required by LBR 3015-1(d)(1) and Rule 2002(a)(9).

For the above procedural reason, this motion will be DENIED WITHOUT PREJUDICE.

5. [22-11410](#)-B-13 **IN RE: HOWARD/KIM CRAUSBY**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
2-15-2023 [\[84\]](#)

MICHAEL MEYER/MV
DAVID BOONE/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This motion was originally heard on March 15, 2023. Doc. #95.

Chapter 13 trustee Michael H. Meyer ("Trustee") moved to dismiss this case for unreasonable delay by the debtors that is prejudicial to creditors and failure to confirm a chapter 13 plan. Doc. #85.

On March 7, 2023, Howard Franke Crausby and Kim Renee Crausby (collectively "Debtors") filed opposition stating that a motion to confirm plan was filed on February 23, 2023, which will resolve the motion to dismiss. Doc. #88. So, the court continued this motion to March 29, 2023 to be heard in connection with the plan confirmation hearing.

However, the court intends to deny without prejudice the motion to confirm plan in matter #4 above because notice of the plan was materially deficient under the local and federal rules.

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 debtors that is prejudicial to creditors and failure to confirm a chapter 13 plan.

Trustee has reviewed the schedules and determined this case has a liquidation value of \$12,248.16 after trustee compensation. This amount is comprised of the non-exempt equity in Debtors' 2018 Hyundai Sonata, 2018 Harley Ultra, funds in checking account at the time of filing, and stocks.

This matter will be called as scheduled to inquire about the parties' current positions.

6. [23-10023](#)-B-13 **IN RE: MARIA URBIETA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-13-2023 [[37](#)]

DISMISSED 3/16/23

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

The court entered an order dismissing this case on March 1, 2023.
Doc. #43. Accordingly, this order to show cause will be dropped and
taken off calendar as moot.

7. [22-11934](#)-B-13 **IN RE: JOSE HERNANDEZ**
[MHM-2](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
2-14-2023 [[31](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

On March 15, 2023, the debtor withdrew the *Chapter 13 Plan* dated
November 14, 2022. Doc. #47. Accordingly, the trustee's objection to
confirmation of the plan will be OVERRULED AS MOOT.

8. [23-10340](#)-B-13 **IN RE: MOISES ARCEMEZA AND JACQUELINE ARCE**
[MHM-1](#)

MOTION TO DISMISS CASE
3-1-2023 [[9](#)]

DISMISSED 3/10/23

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court entered an order dismissing this case on March 10, 2023.
Doc. #14. Accordingly, this motion will be DENIED AS MOOT.

9. [22-11941](#)-B-13 **IN RE: HARVEY/IRENE GONZALES**
[DAB-1](#)

MOTION TO CONFIRM PLAN
2-23-2023 [[32](#)]

IRENE GONZALES/MV
DAVID BOONE/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

The debtors withdrew this motion on February 24, 2023. Doc. #40.
Accordingly, this motion will be dropped and taken off calendar
pursuant to the withdrawal.

10. [22-11941](#)-B-13 **IN RE: HARVEY/IRENE GONZALES**
[DAB-1](#)

MOTION TO CONFIRM PLAN
2-23-2023 [\[36\]](#)

IRENE GONZALES/MV
DAVID BOONE/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Harvey Earl Gonzales and Irene Aguirre Gonzales (collectively "Debtors") seek an order confirming the *First Amended Chapter 13 Plan* dated January 11, 2023. Doc. #32.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR") and Federal Rules of Bankruptcy Procedure ("Rule").

First, the plan was not set for hearing on at least 35 days' notice. LBR 3015-1(d)(1) requires any plan set for a confirmation hearing to comply with Rule 2002(a)(9), which requires at least 21 days' notice of the deadline to file an objection to confirmation, as well as LBR 9014-1(f)(1). To comply with both Rule 2002(a)(9) and LBR 9014-1(f)(1), parties in interest shall be served at least 35 days prior to the hearing.

This motion was filed and served on February 23, 2023 and set for hearing on March 29, 2023. Doc. #39. February 13, 2023 is 34 days before March 29, 2023, and therefore this hearing was not set on at least 35 days' notice as required by LBR 3015-1(d)(1) and Rule 2002(a)(9).

Additionally, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

A similar version of this motion to confirm the *First Amended Chapter 13 Plan* was filed on February 23, 2023 at 7:34:16 p.m. Docs. ##32-35. Less than an hour later, at 8:30:00 p.m., this motion was filed with the same DCN. Docs. ##36-39. The next day, the original version of the motion to confirm plan was withdrawn. Doc. #40. Each separate matter filed with the court must have a different DCN. However, if this motion were construed as an amendment to the earlier filing, the DCN issue may not be fatal.

Third, the location of the hearing contains the wrong floor in the address. Courtroom 13 is located on the fifth floor.

Therefore, this motion will be DENIED WITHOUT PREJUDICE.

11. [22-11941](#)-B-13 **IN RE: HARVEY/IRENE GONZALES**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
2-10-2023 [\[28\]](#)

MICHAEL MEYER/MV
DAVID BOONE/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This motion was originally heard on March 15, 2023. Doc. #47.

Chapter 13 trustee Michael H. Meyer ("Trustee") moved to dismiss this case for unreasonable delay by the debtors that is prejudicial to creditors and failure to confirm a chapter 13 plan. Doc. #28.

On March 7, 2023, Harvey Earl Gonzales and Irene Aguirre Gonzales (collectively "Debtors") filed opposition stating that a motion to confirm plan was filed on February 23, 2023, which will resolve the motion to dismiss. Doc. #43. So, the court continued this motion to March 29, 2023 to be heard in connection with the plan confirmation hearing.

However, the court intends to deny without prejudice the motion to confirm plan in matter #10 above because notice of the plan was materially deficient under the local and federal rules.

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 debtors that is prejudicial to creditors and failure to confirm a chapter 13 plan.

Trustee has reviewed the schedules and determined this case has a liquidation value of \$5,580.60 after trustee compensation. Doc. #30. This amount is comprised of the non-exempt equity in Debtors' 2015 Ford Edge. Since a *de minimis* amount of equity remains for the benefit of unsecured claims, dismissal, rather than conversion, best serves the interests of creditors and the estate.

This matter will be called as scheduled to inquire about the parties' current positions.

12. [17-12244](#)-B-13 **IN RE: JOSE/JUANITA QUINTERO**
[TMO-2](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, NATIONAL
ASSOCIATION
2-22-2023 [\[76\]](#)

JUANITA QUINTERO/MV
THOMAS GILLIS/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.

Jose M. Quintero and Juanita R. Quintero (collectively "Debtors") seek to avoid a lien in favor of Wells Fargo Bank, National Association ("WFB"), in the amount of \$36,642.18 and encumbering residential real property located at 907 S. Rogers Ln., Fresno, CA 93727 ("Property").¹ Doc. #76.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the

exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against joint debtor Juanita Quintero aka Juanita R Quintero, individually and dba Bonanza Furniture, in favor of WFB in the amount of \$36,642.18 on October 21, 2016. *Ex. A*, Doc. #88. The abstract of judgment was issued on November 18, 2016 and was recorded in Fresno County on December 21, 2016. *Id.* That lien attached to Debtors' interest in Property. *Id.*; Doc. #79.

As of the petition date, Property had an approximate value of \$238,310.00. *Id.*; *Sched. A/B*, Doc. #23. Debtor claimed a \$175,000.00 homestead exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730(a)(3) (2017). *Sched. C*, *id.*

Property was encumbered by a first deed of trust in favor of Bank of America ("BoA") in the approximate sum of \$60,029.00. *Sched. D*, *id.* However, BoA filed Proof of Claim No. 5-1 on August 18, 2017 asserting a secured claim, as of the petition date, of \$58,475.47. Claim 5-1.

Property is also encumbered by two liens. The first is a senior judgment lien in favor of First National Bank of Omaha ("FNBO") in the amount of \$6,349.49, which was recorded on September 15, 2016. A motion to avoid the FNBO lien is the subject of matter #13 below. See, TMO-3.

The second is WFB's lien. Property's encumbrances can be illustrated as follows:

Lien	Amount	Recorded	Status
1. BoA mortgage	\$58,475.47	12/10/13	Unavoidable deed of trust
2. FNBO's lien	\$6,349.49	09/15/16	Avoidable in part if most junior
3. WFB's lien	\$36,642.18	12/21/16	Avoidable here

When a debtor seeks to avoid multiple liens under § 522(f)(1), the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*

WFB's lien must be avoided first because it is junior to the FNBO lien, which cannot be avoided until it is the most junior lien. Strict application of the § 522(f)(2) formula with respect to WFB's lien is as follows:

Amount of WFB's lien	\$36,642.18
Total amount of unavoidable liens ²	+ \$64,824.96
Debtors' claimed exemption in Property	+ \$175,000.00
Sum	= \$276,467.14
Debtors' claimed value of interest absent liens	- \$238,310.00
Extent WFB's lien impairs exemption	= \$38,157.14

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

Fair market value of Property	\$238,310.00
Total amount of unavoidable liens	- \$64,824.96
Homestead exemption	- \$175,000.00
Remaining equity for judicial liens	= (\$1,514.96)
WFB's lien	- \$36,642.18
Extent Debtors' exemption impaired	= (\$38,157.14)

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

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

¹ Debtors complied with Fed. R. Bankr. P. 7004(h) and (i) by serving WFB's officer via certified mail on February 22, 2023. Docs. #81; #89.

² This amount consists of the \$58,475.47 due on the deed of trust in favor of BoA and the \$6,349.49 lien in favor of FNBO because FNBO's lien is unavoidable until all junior liens have been avoided.

13. [17-12244](#)-B-13 **IN RE: JOSE/JUANITA QUINTERO**
[TMO-3](#)

MOTION TO AVOID LIEN OF FIRST NATIONAL BANK OF OMAHA
2-22-2023 [\[82\]](#)

JUANITA QUINTERO/MV
THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Granted in part; denied without prejudice in part.

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

Jose M. Quintero and Juanita R. Quintero (collectively "Debtors") seek to avoid a lien in favor of First National Bank of Omaha ("FNBO") in the amount of \$6,349.49 and encumbering residential real property located at 907 S. Rogers Ln., Fresno, CA 93727 ("Property").³ Doc. #82.

No party in interest timely filed written opposition. This motion will be GRANTED IN PART and DENIED WITHOUT PREJUDICE IN PART.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here, in part.

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against joint debtor Juanita Quintero, individually, in favor of FNBO in the amount of \$6,349.49 on August 16, 2016. *Ex. A, Doc. #85*. The abstract of judgment was issued on September 1, 2016 and was recorded in Fresno County on September 15, 2016. *Id.* That lien attached to Debtors' interest in Property. *Id.*; *Doc. #84*.

As of the petition date, Property had an approximate value of \$238,310.00. *Id.*; *Sched. A/B, Doc. #23*. Debtor claimed a \$175,000.00 homestead exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730(a)(3) (2017). *Sched. C, id.*

Property was encumbered by a first deed of trust in favor of Bank of America ("BoA") in the approximate sum of \$60,029.00. *Sched. D, id.* However, BoA filed Proof of Claim No. 5-1 on August 18, 2017 asserting a secured claim, as of the petition date, of \$58,475.47. Claim 5-1.

Property is also encumbered by two liens. The first is FNBO's judgment lien. The second is a junior lien in favor of Wells Fargo Bank ("WFB") in the amount of \$36,642.18, which was recorded on December 21, 2016. A motion to avoid WFB's judgment lien is the subject of matter #12 above. *See, TMO-2*.

Property's encumbrances can be illustrated as follows:

Lien	Amount	Recorded	Status
1. BoA mortgage	\$58,475.47	12/10/13	Unavoidable deed of trust
2. FNBO's lien	\$6,349.49	09/15/16	Avoidable in part
3. WFB's lien	\$36,642.18	12/21/16	Avoided (TMO-2)

When a debtor seeks to avoid multiple liens under § 522(f)(1), the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*

WFB's lien must be avoided first because it is junior to the FNBO lien. In matter #12 above, the court intends to grant Debtors' motion to avoid WFB's lien because it impairs Debtors' exemption. After WFB's lien is avoided, FNBO's lien becomes the most junior lien subject to avoidance. Strict application of the § 522(f)(2) formula with respect to FNBO's lien is as follows:

Amount of FNBO's lien	\$6,349.49
Total amount of unavoidable liens	+ \$58,475.47
Debtors' claimed exemption in Property	+ \$175,000.00
Sum	= \$239,824.96
Debtors' claimed value of interest absent liens	- \$238,310.00
Extent FNBO's lien impairs exemption	= \$1,514.96

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

Fair market value of Property	\$238,310.00
Total amount of unavoidable liens	- \$58,475.47
Homestead exemption	- \$175,000.00
Remaining equity for judicial liens	= \$4,834.53
FNBO's lien	- \$6,349.49
Extent Debtors' exemption impaired	= (\$1,514.96)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is only \$4,834.53 in equity to support FNBO's judicial lien. Therefore, the fixing of FNBO's lien impairs in part Debtors' exemption in the Property in the amount of \$1,514.96. FNBO's secured claim will be fixed at \$4,834.53 and the \$1,514.96 impairing Debtors' exemption will be avoided from Property and unsecured.

Debtors have established the four elements necessary to partially avoid a lien under § 522(f)(1). This motion will be GRANTED IN PART and DENIED WITHOUT PREJUDICE IN PART.

The proposed order shall state that FNBO's lien is secured in the amount of \$4,834.53, and the remainder, \$1,514.96, is unsecured and avoided from the subject Property only. The order shall include a copy of the abstract of judgment attached as an exhibit.

³ Debtors complied with Fed. R. Bankr. P. 7004(h) and (i) by serving FNBO's officer via certified mail on February 22, 2023. Doc. #87.

14. [22-12056](#)-B-13 **IN RE: SHANNON HAGER**
[PK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-1-2023 [\[27\]](#)

IAN MCGILVRAY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
PATRICK KAVANAGH/ATTY. FOR MV.

NO RULING.

Ian McGilvray ("Movant") seeks relief from the automatic stay for cause pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to proceed in a post-foreclosure unlawful detainer action pending in Kern County Superior Court, Case No. BCL-23-010025 (the "Unlawful Detainer Action"), with respect to real property located at 2313 Sycamore Lane, Pine Mountain Club, CA 93222 ("Property"). Doc. #27. Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). *Id.*

No party in interest timely filed written opposition. Although the court is inclined to GRANT the motion, this matter will be called as scheduled to inquire about retroactive relief.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

As a preliminary matter, the certificate of service and exhibits do not comply with the local rules. First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The certificate of service does not contain a DCN and therefore does not comply with the local rules. Doc. #33.

Second, the exhibits are not consistent with the exhibit index. Doc. #29. The exhibit index indicates that the trustee's deed is Exhibit A and the complaint for the Unlawful Detainer Action is Exhibit B. However, Exhibit A is a proposed relief from stay order, Exhibit B is the trustee's deed, and Exhibit C is the complaint. *Id.* Therefore, the exhibits do not comply with LBR 9004-2(d)(2) and

(d)(3). Counsel is advised to review the local rules to ensure procedural compliance in subsequent matters.

Movant purchased Property via foreclosure sale on November 7, 2022. Doc. #32. Shannon Hager ("Debtor") filed chapter 13 bankruptcy on December 1, 2022. Doc. #1. The foreclosing trustee's deed upon sale was recorded on December 2, 2022. *Ex. B*, Doc. #29. Since the trustee's deed was recorded post-petition, the recordation is void. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1188 (9th Cir. 2003). Though Movant argues that the recording of the deed should relate back to the date of the foreclosure sale under Cal. Civ. Code § 2924h(c), this California statute is pre-empted by the Bankruptcy Code. 40235 *Wash. St. Corp. v. Lusardi*, 329 F.3d 1076, 1084-85 (9th Cir. 2003).

Movant subsequently filed the Unlawful Detainer Action entitled "*Giuliana Vista GP v. Shannon Hager, et al.*" on January 6, 2023. *Ex. C*, *id.* Movant is a partner in Giuliana Vista GP ("Giuliana Vista"). Doc. #32.

Notably, neither Movant nor Giuliana Vista are listed as creditors in Debtor's schedules or master address list. Docs. #1; #3; #18. Property is listed in *Schedule A/B* with a value of \$426,600.00 and Flagstar Bank is listed in *Schedule D* as a mortgagee of Property. *Id.* Debtor's proposed chapter 13 plan includes treatment for Flagstar Bank as though the foreclosure did not occur. Doc. #17. Debtor's statement of financial affairs does not list the Unlawful Detainer Action, but the Unlawful Detainer Action had not yet been initiated when the statement was filed. Doc. #18. The statement does note the foreclosure sale occurred on November 7, 2022, but no trustee's deed was recorded. *Id.*

Movant now seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2). Doc. #27.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Property was sold at foreclosure sale pre-petition. *Ex. B*, Doc. #29; Doc. #32.

Additionally, the court finds Debtor does not have any equity in the Property and the Property is not necessary to an effective reorganization. Movant purchased Property at a pre-petition foreclosure sale, so Debtor does not have any equity interest in

Property. *Eden Place, LLC v. Perl (In re Perl)*, 811 F.3d 1120, (9th Cir. 2016). Property is a residence from which no income is derived, so it is not necessary for an effective reorganization. *Wells Fargo, N.A. v. Benton (In re Benton)*, No. 09-41429, 2010 Bankr. LEXIS 5372 at *5 (Bankr. S.D. Ga. Dec. 17, 2010), citing *United Sav. Ass'n of Tex. V. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 375-76 (1988).

The court notes the proposed relief from stay order includes language related to retroactive relief and the *Fjeldsted* factors, but the motion and memorandum of points and authorities do not appear to directly request retroactive relief from stay. *Ex. A*, Doc. #29; *cf.* Docs. #27; #30.

This matter will be called and proceed as scheduled to inquire about retroactive relief from stay. The court is inclined to GRANT this motion pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to take all actions necessary to obtain possession of Property, including obtaining and enforcing a judgment, including lockout, but not for a money judgment.

The 14-day stay of Rule 4001(a)(3) may be ordered waived because Movant completed the foreclosure sale pre-petition and Movant is not adequately protected while the Unlawful Detainer Action remains pending.

15. [22-10760](#)-B-13 **IN RE: MATTHEW CRIPPEN**
[MHM-3](#)

MOTION TO DISMISS CASE
3-1-2023 [[67](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 12, 2023, at 9:30 a.m.

ORDER: The court will issue an order.

The chapter 13 trustee's motion to dismiss will be CONTINUED to April 12, 2023, at 9:30 a.m. to be heard with the debtor's motion to confirm plan. TCS-2.

16. [20-13172](#)-B-13 **IN RE: LIAN JOHNSTON**
[TCS-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LAW OFFICE OF
TIMOTHY C. SPRINGER DEBTORS ATTORNEY(S)
2-21-2023 [\[31\]](#)

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 after
hearing.

Timothy C. Springer ("Applicant"), attorney for Lian Phetphouvong Johnston ("Debtor"), seeks interim compensation in the sum of \$18,375.00 under 11 U.S.C. § 331, subject to final review pursuant to § 330. Doc. #31. This amount is solely for fees as reasonable compensation for services rendered from June 8, 2020 through February 10, 2023. *Id.*

Debtor executed a statement of consent dated February 21, 2023 indicating that Debtor has read the fee application and approves the same. § 9(7), *id.*

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Section 3.05 of Debtors' confirmed plan provides Applicant was paid \$1,625.00 prior to filing the case and, subject to court approval, additional fees of \$19,375.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329 & 330 and

Fed. R. Bankr. P. 2002, 2016-17. The *Disclosure of Compensation of Attorney* form, B2030, indicates that the \$310.00 filing has been paid. Doc. #1.

This is Applicant's first interim fee application. Doc. #31. Applicant's firm provided 48.5 billable hours of legal services at the following rates, totaling **\$18,375.00** in fees:

Professional	Rate	Hours	Fees
Timoyhy C. Springer	\$400	9.50	\$3,800.00
Nancy D. Klepac	\$400	34.90	\$13,960.00
Virginia Ellis	\$150	4.10	\$615.00
Total Hours & Fees		48.50	\$18,375.00

Id.; *Exs. B-C*, Doc. #33. After drawing down the \$1,625.00 in pre-petition payments, \$16,750.00 will remain to be paid by the chapter 13 trustee in accordance with the confirmed plan.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services here included, without limitation: (1) advising Debtor of bankruptcy and non-bankruptcy alternatives; (2) reviewing, independently verifying, and meeting with Debtor regarding substantial business documentation for Debtor's eye car business; (3) preparing schedules, the plan, and petition; (4) preparing and confirming the first modified chapter 13 plan (TCS-1); and (5) preparing this fee application (TCS-2). *Exs. B-C*, Doc. #33. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Debtor reviewed the fee application and consents to payment of the requested compensation. § 9(7), Doc. #31.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$18,375.00 in fees on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. After application of the \$1,625.00 in pre-petition payments, the chapter 13 trustee will be authorized, in the trustee's discretion, to pay Applicant \$16,750.00 for services rendered between June 8, 2020 through February 10, 2023.

17. [20-11186](#)-B-13 **IN RE: JOSE RECILLAS**
[TCS-5](#)

MOTION TO VACATE DISMISSAL OF CASE
3-10-2023 [\[80\]](#)

JOSE RECILLAS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DEBTOR DISMISSED 03/02/2023

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.

Jose Recillas ("Debtor") asks the court to vacate the dismissal of his bankruptcy case under Fed. R. Civ. P. ("Civ. Rule") 60(b)(1) and (6), incorporated under Fed. R. Bankr. P. ("Rule") 9024. Doc. #80. Debtor's counsel claims that inadvertence by counsel resulted in the dismissal of the case. The inadvertence, according to counsel, is traced to a medical condition and staff losses at counsel's office.

Though the court is very sympathetic to the problems counsel faced in this case, the evidence does not support a finding of excusable neglect. The motion will be DENIED.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. 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 a preliminary matter, the motion does not comply with the local rules. LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

Debtor filed this motion on March 10, 2023 with DCN TCS-5. Doc. #80. That same day, Debtor also filed a motion to confirm the fourth modified plan. Doc. #84. The DCN for that motion was also TCS-5, and therefore it does not comply with the local rules. Each separate matter filed with the court must have a different DCN. Counsel is advised to review the local rules to ensure procedural compliance in future matters.

Debtor filed his petition with counsel on March 25, 2020. Doc. #1. He contemporaneously filed a chapter 13 plan which was confirmed in May 2020. This plan, and its subsequent versions, provided for no dividend

to be paid to non-priority, unsecured creditors. It required payments of \$1,085 per month for 60 months. This plan, and subsequent versions, essentially required payments to claimants secured by vehicles, priority claims, attorney's fees, and trustee's fees.

In late August 2020, Debtor filed a first modified plan which was confirmed in October 2020. This plan is the operative Plan in the case. It differed from the first Plan in reclassifying a creditor secured by a vehicle from Class 4 to Class 2. Accordingly, the monthly plan payment increased to \$1,385 for 60 months.

Almost two years later, Debtor filed a second modified Plan. Doc. #39. This Plan reduced the total monthly payment to \$970 per month. One of the vehicles provided for under the first modified plan was involved in a collision resulting in a total loss. The insurance carrier paid the balance meaning the Debtor was now able to reduce his payments to secured creditors under the Plan.

The Trustee objected to this Plan. The Plan did not specify when payments to secured creditors provided for by the Plan were to stop receiving payments or when those creditors were to start receiving lower or higher payments. This Plan was never confirmed.

Debtor elected to respond to the objection by filing a third modified Plan ("TMP") on November 26, 2022. Doc. #51. TMP required reduced payments of \$459.15 per month. This Plan also reclassified one of the creditors secured by a vehicle, Golden 1 Credit Union, from Class 2 to Class 4. The claim was reclassified because Golden 1 Credit Union's collateral needed to be sold by Debtor and the claim paid in full so Debtor could acquire another vehicle. Doc. #55. This Plan was set for hearing in the wrong court. It was never reset for hearing.

On November 28, 2023, Debtor, through counsel, applied *ex parte* for an order extending a deadline set in a previous hearing to file the third modified Plan. No order was ever submitted. Doc. #61.

The court contacted counsel by telephone to advise that the TMP was incorrectly set for hearing. Doc. #64. A notice of calendar correction was sent to counsel by the court November 30, 2022. Doc. #67. The TMP was never set for hearing.

Yet, counsel was working on the case. A motion to approve the sale of the vehicle encumbered by Golden 1 Credit Union was filed and served. TCS-4. The motion was granted by the court December 20, 2022 and an order was entered on January 24, 2023. Docs. #69; #75.

Debtor missed payments under the operative Plan. In late January 2023, the Trustee filed a motion to dismiss for failure to make Plan payments. MHM-1. Debtor never responded to the dismissal motion. Debtor's default was entered, and the dismissal motion was granted on March 2, 2023. Docs. ##76-77. Eight days later, this motion was filed. Doc. #80.

In the motion, Debtor argues the dismissal was due to counsel's neglect and that it is unjust for the debtor to be "penalized" for counsel's failure to respond to the dismissal motion. Debtor cites *Pioneer Inv. Servs. V. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993), to argue that counsel's neglect was excusable and so the dismissal should be vacated.

Application of the *Pioneer* factors does not support vacatur of the dismissal here. "[The determination] of what sorts of neglect will be considered 'excusable', we conclude [is] at bottom an equitable one taking into account all relevant circumstances surrounding the party's omission." *Id* at 395. The factors are outlined below.

Prejudice to the Debtor. Debtor here claims he is prejudiced if the motion is granted because he wants to complete the Plan after paying for over 30 months. And a new Plan will take time to complete.

The motion does not isolate any loss the debtor will suffer. True, he has paid under the Plan for a while. But he has paid down secured and perhaps priority debt. It is also true that another Chapter 13 case will require some time to complete. There is always the Chapter 7 option. All Plans filed in this case provide no dividend to unsecured creditors.

If, however, Debtor needs to be in Chapter 13, the length of the Plan commitment may be shorter. There is some indication in the declarations filed by the Debtor in this case that he is "below median." In sum, there is insufficient proof of prejudice to justify granting the motion.

Length of delay and impact on the proceedings. Debtor here filed this motion only eight days following dismissal of the case. There is no significant post-dismissal delay here.

That said, there is lengthy delay pre-dismissal. Counsel's declaration states that the TMP was filed with this motion to vacate. That is incorrect. Doc. #82. The TMP was filed at the end of November 2022. A duplicate was filed with this motion. Doc. #85. The court promptly advised counsel of the calendaring error in November 2022. Doc. #64; #67. Yet, the hearing on the confirmation of TMP was never set.

In addition, it was nearly two months between when the notice of calendaring error was sent to counsel—who acknowledges receipt of the notice—and when the Trustee filed the motion to dismiss. And nearly three months before opposition had to be filed to the dismissal motion.

These lengthy pre-dismissal delays support denial of the motion.

Reason for the delay and whether it was within movant's control. Debtor here argues, through counsel, that staffing problems and the

effects of counsel's health condition explain the delay and so the motion should be granted. The court disagrees.

There is no explanation of the impact of either issue during the nearly two and one-half months between when counsel received the calendaring error notice from the court and when opposition to the dismissal motion was due. Counsel claims she assumed the TMP was filed and that would take care of the dismissal motion. In fact, the TMP had been filed since November 2022. But it was not set for hearing.

Even the Trustee's dismissal motion mentioned the filed TMP that was not set for hearing. Doc. #71. Further, during the period between the court's calendar notice and the dismissal motion being filed, counsel set a hearing for the sale of a vehicle and successfully prosecuted the motion. So, it is both unclear and perplexing how either staffing or illness led to inadvertent failure to respond to the dismissal motion when this case was being prosecuted during the period. Counsel states she missed days of work. But the declaration does not tie those missed workdays with the deadlines involved here.

Debtor's argument that he should not be penalized for counsel's errors ignores the Supreme Court's analysis that clients are not insulated from the impact of counsel's inadvertence. *Pioneer*, 507 U.S. at 396-97.

In sum, there may be reasons for the inadvertence but no evidence those reasons caused the inadvertence here or that it was not within Debtor or counsel's control.

Movant's good faith. There is no evidence here that Debtor or counsel are acting in bad faith.

On balance, the *Pioneer* factors weigh against granting the motion.

Debtor also raised Civ. Rule 60(b)(6) as grounds for granting the motion. That provision permits relief from a judgment or order for "any other reason that justifies relief." Debtor does not develop that argument in the motion. Based on the facts, even if developed and if the relief is available, that relief would not be granted. "To justify relief under subsection (6) of [Civ.] Rule 60(b) a party must show extraordinary circumstances suggesting a party is faultless in the delay." *Pioneer*, 507 U.S. at 393. As shown above, no extraordinary circumstances exist here.

The motion shall be DENIED.

18. [23-10099](#)-B-13 **IN RE: ANGELA MCPHETRIDGE**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
3-14-2023 [\[19\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

The debtor filed a modified plan on March 23, 2023. MAZ-1.
Accordingly, the trustee's objection to confirmation of the original
plan will be OVERRULED AS MOOT.

11:00 AM

1. [22-10060](#)-B-7 **IN RE: CURTIS/CHARTOTTE ALLEN**
[23-1005](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
1-23-2023 [[1](#)]

U.S. TRUSTEE V. ALLEN ET AL
JASON BLUMBERG/ATTY. FOR PL.

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

DISPOSITION: Continued to April 19, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

The court entered the defendants' defaults on March 13, 2023. Docs. #13; #15. The plaintiff was directed to apply for a default judgment within 30 days and schedule a "prove-up" hearing. *Id.* Accordingly, this status conference will be CONTINUED to April 19, 2023 at 11:00 a.m. If a prove-up hearing has not been scheduled prior to the date of the continued status conference, the court may issue an order to show cause regarding dismissal of the adversary proceeding for failure to prosecute.

2. [21-12873](#)-B-7 **IN RE: CESAR PENA BARRAZA AND OLGA PENA LOPEZ**
[23-1006](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
1-25-2023 [[1](#)]

EDMONDS V. PENA BARRAZA ET AL
ANTHONY JOHNSTON/ATTY. FOR PL.

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

DISPOSITION: Continued to June 28, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

Chapter 7 trustee Irma C. Edmonds ("Plaintiff") filed a notice indicating the parties have agreed to settle this adversary proceeding and requesting a 90-day continuance. Doc. #20. Accordingly, this status conference will be CONTINUED to June 28, 2023 at 11:00 a.m. If the parties have not resolved the adversary proceeding by the date of the continued status conference, then Plaintiff shall file a status report not later than 7 days before the hearing.