



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

**HONORABLE RENÉ LASTRETO II
Department B – 510 19th Street
Bakersfield, California**

Hearing Date: Wednesday, April 5, 2023

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

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) via **ZOOMGOV VIDEO**, (2) via **ZOOMGOV TELEPHONE**, and (3) via **COURTCALL**. You may choose any of these options unless otherwise ordered. Parties in interest and members of the public may connect to ZoomGov, free of charge, using the information provided:

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Please join at least 10 minutes before the start of your hearing. You are required to give the court 24 hours advance notice on [Court Calendar](#).

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](#) for these and additional instructions.
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.

9:00 AM

1. [23-10108](#)-B-13 **IN RE: ADAM TAPIA**

OBJECTION TO CONFIRMATION OF PLAN BY DS HOUSING APH 01 LP
3-14-2023 [\[36\]](#)

DS HOUSING AHP-01 LP/MV
REILLY WILKINSON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled as moot.

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

DS HOUSING AHP-01 ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed by Adam M. Tapia ("Debtor") on February 21, 2023.
Doc. #36.

The court intends to dismiss this case in matter #2 below. MHM-1. If dismissed, this objection will be OVERRULED AS MOOT. If the case is not dismissed, this objection will be OVERRULED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, the objection and notice of hearing did not contain a Docket Control Number. Docs. ##36-37. LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a 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 DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

The court notes that the certificate of service did contain DCN RDW-001. Doc. #38. However, Creditor also filed a motion for relief from the automatic stay on the same day as this objection that also contains DCN RDW-001. Doc. ##30-35. Since DCN RDW-001 (or RDW-1) has already been used, it cannot be reused for this objection.

Second, the notice of hearing did not comply with LBR 9014-1(d)(3)(B)(iii), which requires the objecting party to notify

respondents that they can determine: (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Doc. #37.

Since the case will be dismissed in matter #2 below, the court intends to OVERRULE AS MOOT this objection.

If the case is not dismissed, the objection will be OVERRULED WITHOUT PREJUDICE. LBR 3015-1(c)(4) sets the deadline to file an objection to confirmation of the original plan to seven days after the date first set for the meeting of creditor, and this objection was timely filed. If the case is not dismissed, Creditor will be permitted to file an amended objection, if any, within seven (7) days of the date of entry of the order overruling the objection without prejudice.

2. [23-10108](#)-B-13 **IN RE: ADAM TAPIA**
[MHM-1](#)

MOTION TO DISMISS CASE
3-8-2023 [[22](#)]

MICHAEL MEYER/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The 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)(1) for unreasonable delay by the debtor that is prejudicial to creditors, failure to appear at meeting of creditors and, failure to provide the requested documentation to the trustee. Doc #22. Adam M. Tapia ("Debtor") did not oppose.

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

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

F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). 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)(1) for unreasonable delay.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. Debtor failed to appear at the meeting of creditors on March 7, 2023, failed to file complete and accurate schedules, and failed provide the following required documents to Trustee: (a) copies of all payment advices or other evidence of payment received within 60 before filing the petition; (b) all pages of Debtor's most recent tax returns; (c) copy of original, valid picture ID, such as a driver's license; (d) proof of Debtor's complete social security number by way of social security card or W-2 form; (e) completed statement by Debtor not represented by attorney; (f) Class 1 checklist with most recent mortgage statement; (g) evidence of payment to Class 1 claims; (h) the domestic support obligation checklist; (i) authorization to release information; (j) documents required by Form 122C-2 related to home energy costs, education expenses for dependent children under 18, and special circumstances deduction; and (k) a declaration from the third party who contributes to Debtor's monthly income. Docs. #22; #24.

Since the schedules are inaccurate and/or incomplete, Trustee has been unable to determine the liquidation value of this case.

This matter will be called and proceed as scheduled. The court will inquire about liquidation value. The court intends to GRANT this motion and either convert or dismiss this case.

3. [23-10108](#)-B-13 **IN RE: ADAM TAPIA**
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
3-14-2023 [\[30\]](#)

DS HOUSING AHP-01 LP/MV
REILLY WILKINSON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

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

DS HOUSING AHP-01 ("Movant") seeks relief from the automatic stay for
cause pursuant to 11 U.S.C. § 362(d)(1) to enforce an unlawful
detainer judgment by lockout with respect to real property located at
8112 Morningstar Ave., Bakersfield, CA 93306 ("Property"). Doc. #30.
Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P.
("Rule") 4001(a)(3). *Id.*

Written opposition was not required may be presented at the hearing.
The court intends to dismiss this case in matter #2 above. MHM-1. If
dismissed, this motion will be DENIED AS MOOT. If the case is not
dismissed, this motion may be GRANTED.

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

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

After review of the included evidence, the court finds that "cause"
exists to lift the stay because Movant purchased Property via
foreclosure sale on June 3, 2022. Doc. #32. Movant recorded a
Trustee's Deed Upon Sale on July 22, 2022. *Ex. A*, Doc. #33. Movant
obtained an unlawful detainer judgment in Kern County Superior Court,
Case No. BCL-22-014715, on November 16, 2022. *Exs. C-E, id.* That same
day, a writ of possession was issued and a lockout was set for January
26, 2023. *Ex. F, id.*; Doc. #32.

Accordingly, this matter will be called and proceed as scheduled. If this case is dismissed in matter #2 above, this motion will be DENIED AS MOOT. If the case is not dismissed, the motion may be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

If granted, the 14-day stay of Rule 4001(a)(3) may be ordered waived because the Movant is not adequately protected while the lockout remains pending.

4. [22-11720](#)-B-13 **IN RE: ERIN STEVENSON**
[MHM-3](#)

MOTION TO DISMISS CASE
2-23-2023 [\[41\]](#)

MICHAEL MEYER/MV
MATTHEW DECAMINADA/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

Chapter 13 trustee Michael H. Meyer ("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)], failure to file tax returns for the years 2016-18 and 2020 [§ 1307(e)], failure to confirm a chapter 13 plan [§ 1307(c)], and failure to file complete and accurate file *Schedule E/F* [§ 521; Fed. R. Bankr. P. 1007]. Doc #41.

Erin David Stevenson ("Debtor") timely filed a response on March 22, 2023. Doc. #45. Debtor intends to file a modified plan to resolve the issues raised in Trustee's motion. Additionally, Debtor claims the required taxes and information have been sent to the IRS. *Id.*

Debtor filed a modified plan on March 31, 2023, which is set for hearing on June 7, 2023. MJD-1.

This matter will be called and proceed as scheduled to inquire about the delinquent tax returns and *Schedule E/F*.

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

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) and (e) for unreasonable delay that is prejudicial to creditors, failure to confirm a chapter 13 plan, and failure to file complete and accurate schedules.

The record shows unreasonable delay by Debtor that is prejudicial to creditors. Debtor failed to file tax returns for years 2016, 2017, 2018 and 2020, failed to confirm a plan, and failed to file a complete and accurate *Schedule E/F*. Trustee also indicates that the "wife's creditors" have not been listed in the schedules or served. Doc. #23.

Debtor's response provided no evidence that the tax returns for 2016-18 and 2020 were filed. Doc. #45. Debtor also has not filed an *Amended Schedule E/F*. However, Debtor did file a modified plan that is set for hearing on June 7, 2023. MJD-1.

In addition, Trustee has reviewed the schedules and determined that this case has a liquidation value of \$1,918.50 after trustee compensation if the case were converted to chapter 7. Doc. #43. This amount is comprised of the value of Debtor's 2005 Ford Mustang, 2008 Scion TC, car parts, shelving and a safe. The liquidation value of this case is *de minimis*. Therefore, dismissal, rather than conversion, serves the interests of creditors and the estate.

This matter will be called and proceed as scheduled. The court will inquire whether there is evidence the tax returns have been filed. The court will also inquire about the accuracy of *Schedule E/F*.

5. [23-10030](#)-B-13 **IN RE: CRISTY PAREDES**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
2-10-2023 [\[17\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

This objection was originally heard on March 8, 2023. Doc. #20.

Chapter 13 trustee Michael H. Meyer ("Trustee") objected to confirmation of the *Chapter 13 Plan* filed by Christy Eloisa Paredes ("Debtor") on January 6, 2023 under 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #17.

The court continued the objection to April 5, 2023 and directed Debtor to file and serve a written response not later than March 22, 2023, or a confirmable, modified plan not later than March 29, 2023, or the objection would be sustained without further hearing. Docs. #20; #22. Debtor neither responded nor filed a modified plan.

On March 29, 2023, Debtor filed a status report, indicating Debtor likely will not seek confirmation of a modified plan because she decided to sell the house and has already agreed on a sale price with a buyer. Doc. #26. Debtor says the current plan can be confirmed by removing the first trust deed holder from the plan with the consent of Trustee and the creditor. *Id.*

Notwithstanding Debtor's tardy response, it appears Trustee's objection may be resolved in an order confirming plan. This matter will be called and proceed as scheduled to inquire about Trustee's reply.

6. [23-10030](#)-B-13 **IN RE: CRISTY PAREDES**
[RAS-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY PHH MORTGAGE CORPORATION
1-26-2023 [[14](#)]

PHH MORTGAGE CORPORATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
FANNY WAN/ATTY. FOR MV.

NO RULING.

This objection was originally heard on March 8, 2023. Doc. #21.

PHH Mortgage Corporation ("Creditor") objected to confirmation of the *Chapter 13 Plan* filed by Christy Eloisa Paredes ("Debtor") on January 6, 2023 under 11 U.S.C. § 1325(a)(1) because it does not promptly cure Creditor's pre-petition arrears as required by § 1322(b)(5). Doc. #14.

The court continued the objection to April 5, 2023 and directed Debtor to file and serve a written response not later than March 22, 2023, or a confirmable, modified plan not later than March 29, 2023, or the objection would be sustained without further hearing. Docs. #21; #23. Debtor neither responded nor filed a modified plan.

On March 29, 2023, Debtor filed a status report, indicating Debtor likely will not seek confirmation of a modified plan because she decided to sell the house and has already agreed on a sale price with a buyer. Doc. #26. Debtor says the current plan can be confirmed by removing the first trust deed holder from the plan with the consent of Creditor and the chapter 13 trustee. *Id.*

Notwithstanding Debtor's tardy response, it appears Creditor's objection may be resolved in an order confirming plan. This matter will be called and proceed as scheduled to inquire about Creditor's reply.

7. [16-10433](#)-B-13 **IN RE: DEAN GALLOWAY**
[MHM-2](#)

MOTION TO DISMISS CASE
3-3-2023 [\[70\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or denied without prejudice.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) and (6) for unreasonable delay by the debtor that is prejudicial to creditors and material default by the debtor with respect to a term of a confirmed plan. Doc #70.

Dean Galloway ("Debtor") filed a timely response on March 20, 2023, indicating Debtor will pay off his plan in the amount of \$865.77 by the hearing date via MoneyGram. Doc. #75.

This matter will be called and proceed as scheduled. The court will inquire whether Debtor has completed payments under the plan. If so, this motion will be DENIED WITHOUT PREJUDICE. Otherwise, this motion may be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46

F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtor 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).

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) and (6) for unreasonable delay by the debtor that is prejudicial to creditors and material default by the debtor with respect to a term of a confirmed plan.

The record shows Debtor's plan payments are delinquent in the amount of \$634.00. The total claims filed require an aggregate payment of \$39,941.97. Debtor has paid \$38,626.00. There is a delinquency of \$1,315.97 to complete the case. Doc. #72.

Debtor's response indicates he will pay \$865.77 via MoneyGram to complete the case. Doc. #75.

Trustee has reviewed the schedules and determined this case has a liquidation value of \$2,316.75 after trustee compensation. Doc. #72. This amount consists of the equity in Debtor's 1997 Honda Motorcycle, 1996 Kawasaki Motorcycle, cash in bank accounts, and a tax refund. Since a *de minimis* amount of equity exists that could be liquidated for the benefit of secured claims, dismissal, rather than conversion, best serves the interests of creditors and the estate.

This matter will be called as scheduled to inquire whether Debtor has completed payments under the plan. If so, this motion will be DENIED WITHOUT PREJUDICE. Otherwise, this motion may be GRANTED, and the case dismissed.

8. [23-10143](#)-B-13 **IN RE: VICTOR CORDOVA**
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT
COMPANY LLC
2-15-2023 [[13](#)]

FORD MOTOR CREDIT COMPANY LLC/MV
GREGORY SHANFELD/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION: Continued to May 3, 2023 at 9:00 a.m.

ORDER: The court will issue an order.

Ford Motor Credit Company LLC ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed by Victor Manuel Cordova ("Debtor") on January 27, 2023 because the plan fails to classify its claim as a purchase money security interest and fails to provide the proper "formula" discount rate in conformance with *Till v. SCS Credit Corp.*, 124 S. Ct. 1951 (2004) and 11 U.S.C. § 1325(a)(5)(B)(ii). Doc. #13.

This objection will be CONTINUED to May 3, 2023 at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Creditor's objection to confirmation is withdrawn, the Debtor shall file and serve a written response not later than April 19, 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 in support of Debtor's position. Creditor shall file and serve a reply, if any, by April 26, 2023.

If Debtor elects to withdraw the 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 April 26, 2023. If the Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without a further hearing.

9. [19-15245](#)-B-13 **IN RE: RITA AGCAOILI**
[PK-1](#)

AMENDED MOTION TO MODIFY PLAN
2-14-2023 [\[64\]](#)

RITA AGCAOILI/MV
PATRICK KAVANAGH/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 hearing.

Rita M. Agcaoili ("Debtor") moves for an order confirming the *First Modified Chapter 13 Plan* dated February 8, 2023. Doc. #64. The 60-month, 0%-dividend plan proposes that Debtor has paid a total of \$53,158.28 through January 31, 2023, and beginning March 2023, Debtor will pay \$2,262.00 per month. Doc. #45. Debtor's *Amended Schedules I & J* indicate Debtor receives \$2,226.59 in monthly net income, which leaves a \$35.41 deficit compared to the plan payment. Doc. #46. The plan also contains a *Johnson* waiver for attorney fees not paid at time of discharge and specific treatment for secured claims. Doc. #45.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the plan under 11 U.S.C. § 1325(a)(6) because the debtor will not be able to make all payments under the plan and comply with the plan. Doc. #75.

Debtor responded. Docs. ##75-76.

This motion will be called and proceed as scheduled.

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 U.S. Trustee, or any other party in interest except Trustee 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 except Trustee 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).

First, Trustee indicates there are 22 months remaining in the case, but the plan funds in 23.58 months. Doc. #75. However, Trustee received a monthly payment on March 1, 2023 by way of cashier's check.

If this payment is applied as the February 2023 payment, then the proposed payment funds in time. So, if the order confirming plan corrects the additional provisions to note that aggregate payments of \$55,384.28 have been paid through February 2023 (Month 38), then this issue can be resolved.

Second, the plan does not provide for a monthly dividend for Capital One Auto Finance that is being provided for in Class 2. If the amount due and owing to Capital One is \$12,550.51 as claimed in its motion for relief from stay (MMJ-1), then a monthly dividend of \$607.00 will fund in 21.99 months. *Id.*

In response, Debtor agrees that the \$2,226.00 payment received March 1, 2023 should be applied to the February 2023 payment. Doc. #77. Debtor agrees to incorporate this change into the order confirming plan. *Id.* Additionally, Debtor claims a \$1,500.00 check drawn on the attorney-client trust account was tendered to Capital One on February 13, 2023, but that check has not cleared the bank. The amount reflected in the plan is \$11,050.51, which should be correct if Capital One accepts that payment.

This matter will be called and proceed as scheduled because it appears Trustee's objection can be resolved in an order confirming plan. If granted, the confirmation order shall include the docket control number of the motion, shall reference the plan by the date it was filed, and shall be approved as to form by Trustee.

10. [22-12056](#)-B-13 **IN RE: SHANNON HAGER**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
2-27-2023 [\[23\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Continued to May 3, 2023 at 9:00 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of *Chapter 13 Plan* filed by Shannon Hager ("Debtor") on December 28, 2023 under Local Rule of Practice ("LBR") 3015-1(c)(4) and 11 U.S.C. §§ 1322(b)(2) & 1325(a)(1) because the plan impermissibly modifies the claim of creditors whose claims are secured only by a security interest in real property that is the debtor's principal residence. Doc. #23.

This objection will be CONTINUED to May 3, 2023 at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or

Trustee's objection to confirmation is withdrawn, the Debtor shall file and serve a written response not later than April 19, 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 in support of Debtor's position. Trustee shall file and serve a reply, if any, by April 26, 2023.

If Debtor elects to withdraw the 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 April 26, 2023. If the Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without a further hearing.

11. [22-11962](#)-B-13 **IN RE: JUAN FIGUEROA**
[MHM-1](#)

MOTION TO DISMISS CASE
2-27-2023 [\[22\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or denied without prejudice.

ORDER: The minutes of the hearing will be the court's findings and conclusions. 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)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors and for failure to commence making timely payments. Doc #22.

Juan Gabriel Figueroa ("Debtor") timely filed a response on March 21, 2023, stating Debtor has paid all plan payments due and will pay the March 2022 [sic] plan payment. Doc. #26.

This matter will be called and proceed as scheduled. The court will inquire whether Debtor has cured the delinquency. If so, this motion will be DENIED WITHOUT PREJUDICE. Otherwise, this motion may be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46

F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtor 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).

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) and (4) for unreasonable delay by the debtor that is prejudicial to creditors and failure to commence making timely plan payments.

The record shows Debtor was delinquent \$1,500.00 as of February 27, 2023. Doc. #24. An additional payment of \$500.00 will become due on March 25, 2023, for a total delinquency of \$2,000.00. *Id.*

In response, Debtor says the delinquency will be cured prior to the hearing, including the March payment. Doc. #26.

In addition, Trustee has reviewed the schedules and determined that this case has a liquidation value ranging between \$21,370.00 and \$41,290.20. This amount consists of a 2012 Cascadia Freightliner, 2012 VW Jetta, Great Dane Trailer, funds on hand in Wells Fargo 2 Business account, and a vacant lot. The liquidation value is in dispute due to the value of the vacant lot, which the debtor is in the process of selling. If Debtor were to amend the exemptions, there would remain non-exempt equity that could be realized for the benefit of unsecured creditors should the case be converted to chapter 7. Therefore, conversion to chapter 7, rather than dismissal, best serves the interests of creditors and the estate.

This matter will be called as scheduled to inquire whether Debtor has cured the delinquency. If so, this motion will be DENIED WITHOUT PREJUDICE. Otherwise, this motion may be GRANTED, and the case converted to chapter 7.

12. [23-10075](#)-B-13 **IN RE: REFUJIO GUILLEN**
[DMG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PEOPLE OF THE STATE OF
CALIFORNIA
3-9-2023 [\[24\]](#)

PEOPLE OF THE STATE OF CALIFORNIA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled as moot or continued.

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

The People of the State of California ("Creditor") object to confirmation of the *Chapter 13 Plan* filed by Refugio Guillen ("Debtor") on February 15, 2023 because (i) the plan is not proposed in good faith [11 U.S.C. § 1325(a)(3)], (ii) the plan does not satisfy the best interests of creditors test [§ 1325(a)(4)], and (iii) the plan is not feasible [§ 1325(a)(6)]. Doc. #24.

The court intends to dismiss this case in matter #14 below. If the case is dismissed, this objection will be OVERRULED AS MOOT. If the case is not dismissed, the objection will be CONTINUED to May 3, 2023 at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Creditor's objection to confirmation is withdrawn, the Debtor shall file and serve a written response not later than April 19, 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 in support of Debtor's position. Creditor shall file and serve a reply, if any, by April 26, 2023.

If Debtor elects to withdraw the 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 April 26, 2023. If the Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without a further hearing.

13. [23-10075](#)-B-13 **IN RE: REFUJIO GUILLEN**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
3-22-2023 [\[28\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled as moot or continued.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Refugio Guillen ("Debtor") on February 15, 2023 because (i) the plan fails to provide for the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim in at least the amount that would be paid if the estate was liquidated under chapter 7 [11 U.S.C. § 1325(a)(4)]; and (2) the debtor will not be able to make all payments under the plan and comply with the plan [§ 1325(a)(6)]. Doc. #28.

The court intends to dismiss this case in matter #14 below. If the case is dismissed, this objection will be OVERRULED AS MOOT. If the case is not dismissed, the objection will be CONTINUED to May 3, 2023 at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, the Debtor shall file and serve a written response not later than April 19, 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 in support of Debtor's position. Trustee shall file and serve a reply, if any, by April 26, 2023.

If Debtor elects to withdraw the 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 April 26, 2023. If the Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without a further hearing.

14. [23-10075](#)-B-13 **IN RE: REFUJIO GUILLEN**
[MHM-2](#)

MOTION TO DISMISS CASE
3-22-2023 [\[31\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause for unreasonable delay by the debtor that is prejudicial to creditors [11 U.S.C. § 1307(c)(1)]; failure to set a plan for hearing with notice to creditors; and failure to file complete and accurate file *Schedules A/B & D* [§ 521; Fed. R. Bankr. P. 1007]. Doc. #31. Doc #31.

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

This matter was noticed pursuant to LBR 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondent's default and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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, failure to set a plan for hearing, and failure to file complete and accurate schedules.

Debtor has failed to disclose all assets, disclose the true value and extent of interest in real property in Tulare County, and disclose all creditors. Doc. #33.

Since Debtor has filed inaccurate and/or incomplete schedules, Trustee is unable to determine liquidation value of this case. Trustee estimates the liquidation value ranges from \$10,000 to \$200,000. *Id.*

This matter will be called and proceed as scheduled. The court is inclined to GRANT the motion. At the hearing, the court will determine whether to dismiss or convert this case.

10:00 AM

1. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[BSH-2](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC
STAY
3-10-2023 [[956](#)]

INDIGO COMMERCIAL FUNDING, LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
BRIAN HEALY/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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, Freon Logistics ("Debtor") was not properly served. Under Rule 4001(d)(1)(A)(iii), a party may file a motion for approval of an agreement to modify or terminate the stay provided in § 362.

Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. This motion will affect Debtor's and the estate's interest in property, so Debtor and the Chapter 7 Trustee must be served in accordance with Rule 7004. However, Trustee is party to the stipulation, so Trustee has consented to the relief sought. Debtor is not a party to the stipulation.

Rule 7004(b)(9) requires service upon the debtor by mailing a copy of the pleadings to the address shown in the petition or to such other address as the debtor may designate in a filed writing. Electronic service is precluded here because Rule 9036 "does not apply to any paper required to be served in accordance with Rule 7004." Rule 9036(e).

Here, the certificate of service states that all parties were served by "Electronic Service" under Federal Rule of Civil Procedure ("Civ. Rule") 5(b)(2)(E), *as incorporated by* Rules 7005 and 9036. Docs. #959; #979; #981. Debtor must be served by mail in accordance with Rule 7004(b)(9).

Second, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii), which requires the movant to notify respondents

that they can determine: (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

Third, LBR 9004-2(d) requires exhibits to be filed as a separate exhibit document, requires an exhibit index stating the page number at which each exhibit is found within the exhibit document, and requires use of consecutively numbered exhibit pages throughout the exhibit document, including any separator, cover, or divider sheets.

Here, the exhibits are filed as separate exhibit documents but do not contain an exhibit index. Doc. #957.

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

2. [23-10135](#)-B-7 **IN RE: SCHFUNCELL WHITLEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-22-2023 [[25](#)]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

Schfuncell Whitley ("Debtor") filed an *Amended Verification and Master Address List* on February 6, 2023. Doc. #18. A fee of \$32.00 is required at the time of filing that document. A *Notice of Payment Due* was served on Debtor on February 12, 2023. Doc. #22.

On February 22, 2023, the Clerk of the court issued an *Order to Show Cause re Dismissal of Contested Matter or Imposition of Sanctions* directing Creditor to appear at the hearing and show cause why the case should not be dismissed, sanctions imposed on the Debtor, or other relief ordered for failure to comply with the provisions of 28 U.S.C. § 1930(b). Doc. #25.

Under 28 U.S.C. § 1930(f)(1), the bankruptcy court may waive the filing fee in a chapter 7 case for an individual if the court determines that the individual, based on their family size, has income less than 150 percent of the income official poverty line. For the purposes of § 1930(f)(1), the term "filing fee" means any filing fee required under § 1930(a), (b), or (c). Although Debtor obtained a waiver of the chapter 7 filing fee on February 10, 2023 (Doc. #20),

this waiver applied only to the filing of the petition. Debtor will need to request a new fee waiver for the amendment filing fee.

This matter will proceed as scheduled. The court intends to order Debtor to either pay the \$32.00 amendment fee or obtain an order waiving the amendment fee not later than April 26, 2023, or the case will be dismissed for failure to pay the amendment filing fee.

3. [13-14741](#)-B-7 **IN RE: JAMES LEON**
[RSB-1](#)

MOTION TO AVOID LIEN OF CITIBANK, NA
3-10-2023 [\[59\]](#)

JAMES LEON/MV
R. BELL/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a 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 DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

A motion to avoid lien was filed by the debtor on January 11, 2023 and was denied without prejudice on March 10, 2023 for other procedural reasons. Docs. #49; #58. The DCN for that motion was RSB-1. The DCN for this motion is also RSB-1, and therefore it does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

Second, for motions filed on less than 28 days' notice, LBR 9014-1(f)(2)(C) requires the movant to notify respondents written opposition is not required and any opposition to the motion must be presented at the hearing.

This motion was filed and served on March 10, 2023 and set for hearing on April 5, 2023. Docs. ##59-63; #65; #67. March 10, 2023 is 26 days before April 5, 2023. Therefore, this motion was set for hearing on less than 28 days' notice under LBR 9014-1(f)(2). Nevertheless, the notice and amended notice both stated:

[o]pposition, if any to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) calendar days preceding the date or continued date of the hearing . . . Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

Notice & Am. Notice, 2:4-9, Docs. #60; #65. This is incorrect. Motions noticed less than 28 days before the hearing are deemed brought pursuant to LBR 9014-1(f)(2). The notice should have informed respondents that written opposition was not required, and opposition, if any, shall be presented at the hearing. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs. Therefore, the notice was materially deficient because the respondents were told to file and serve written opposition even though it was not necessary. Thus, interested parties may be deterred from opposing at the motion or from appearing at the hearing.

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

4. [23-10384](#)-B-7 **IN RE: JOHN/KAMI DUNN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-14-2023 [[20](#)]

PHILLIP GILLET/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

John Patrick and Kami Jean Dunn ("Debtors") filed a *Voluntary Petition* on February 28, 2023. Doc. #1. A fee of \$338.00 is required at the

time of filing that motion. A *Notice of Payment Due* was served on Debtors on March 4, 2023. Doc. #21.

On March 14, 2023, the Clerk of the court issued an *Order to Show Cause re Dismissal of Contested Matter or Imposition of Sanctions* directing Creditor to appear at the hearing and show cause why the case should not be dismissed, sanctions imposed on the Debtors and/or their counsel, or other relief ordered for failure to comply with the provisions of 28 U.S.C. § 1930(b). Doc. #20

This matter will proceed as scheduled. If the filing fee of \$338.00 is not paid prior to the hearing, the case may be dismissed, sanctions imposed on the Debtors and/or their counsel, or other appropriate relief ordered on the grounds stated in the OSC.

5. [23-10395](#)-B-7 **IN RE: LAURA CAVERHILL**
[MET-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-21-2023 [[17](#)]

BANK OF THE WEST/MV
MATTHEW RESNIK/ATTY. FOR DBT.
MARY TANG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Bank of the West ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2016 Itasca Cambria Motorhome ("Vehicle"). Doc. #17. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

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

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

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there

is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor is 2 payments past due in the amount of \$1,508.58. Doc. #20.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. Movant values the Vehicle at \$40,000.00 and the amount owed to Movant is \$92,937.45. Docs. #19, 20.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because the debtor has failed to make at least one post-petition payment and the Vehicle is a depreciating asset.

6. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[DMG-12](#)

MOTION TO EMPLOY GOULD AUCTION & APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
3-27-2023 [[987](#)]

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.
OST 3/27/23

NO RULING.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") seeks authorization to (i) employ Gould Auction and Appraisal Company ("Auctioneer") under 11 U.S.C. § 328; (ii) sell the estate's interest in various items of personal property ("Estate Assets") located at two of the debtor's truck yards at 1135 Enos Lane and 235 Mt. Vernon Ave., Bakersfield, CA, at public auction under § 363(b)(1); and (iii) compensate Auctioneer under §§ 327(a) and 328. Doc. #987. The auction will be

held on or after April 8, 2023 at 9:00 a.m. at 6200 Price Street, Bakersfield, California. *Id.* Trustee also requests waiver of the 14-day stay of Fed. R. Bankr. P. 6004(h). *Id.*

Trustee filed a notice of errata on March 31, 2023 to correct his declaration. Doc. #1004.

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

This motion was filed and served with an order shortening time pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3). Doc. #997. Consequently, no party in interest was required to file written opposition to the motion. If any respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Employment and Compensation

This motion affects the proposed disposition of estate assets and Auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion to add Auctioneer as a party.

LBR 9014-1(d)(5)(B)(iii) permits joinder of requests for authorization to employ a professional, i.e., auctioneer, for sale of estate property at public auction, and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rules 6004-05.

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 25% commission on the gross proceeds from the sale; and (ii) \$0 for expenses. Docs. #990; #1004. Auctioneer will use the online service Proxibid, which charges an additional 3% fee for use of the service. *Id.* In addition, Auctioneer charges buyers an additional 10% premium on the purchase price. *Id.* Auctioneer will be responsible for collecting and paying sales tax in relation to the sale of the truck and will bear the costs of ordinary expenses incidental to an auction sale, including but not limited to, security, advertising, and other costs of sale. *Id.* Auctioneer holds a \$150,000.00 bond as required by the U.S. Trustee.

Trustee and Jerry Gould, Auctioneer's owner, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). Docs. ##989-90; 1004. With respect to Debtor, Auctioneer is not a creditor, equity security holder, insider, investment banker for any outstanding security of the debtor within the three years before the petition date, or an attorney for such investment banker. *Id.* Within two years of the petition date was not a director, officer, or employee of the debtors or an investment banker. *Id.* Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtors, or any other party in interest, and had not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.* Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate the Estate Assets. *Id.* Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 25% commission and \$0 in expenses.

Proposed Sale

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D.

Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Here, Trustee wants to sell the Estate Assets listed in the included exhibit. *Ex. A*, Doc. #991. These are miscellaneous personal property items from the two real properties at 1135 Enos Lane and 235 Mt. Vernon Ave., in Bakersfield, CA. The court previously approved the sale of these properties, the first of which is expected to close on or before March 31, 2023. Doc. #987.

Trustee has conducted a UCC search and determined that Commercial Credit Group ("CCG") holds a first position UCC on all of the Estate Assets with a claim in excess of \$12 million. CCG has agreed to the 25% commission for Auctioneer and the buyer's commission, and to split the net proceeds of the sale with the estate on a 50/50 basis. *Id.* Trustee estimates net proceeds for the estate to be between \$30,000 to \$100,000.

Trustee intends to publicize the auction with display advertisements in AG Source Magazine, the Bakersfield Californian, Camera Ads, Industrial Market Place, the Gould Auction website, and Gould Auction Facebook ads. *Id.*; Doc. #1004.

Trustee believes that he will obtain the best and highest net recovery for the estate by selling the Estate Assets at public auction. Doc. #987. The auction is scheduled on a date where other property is being liquidated, so it will draw a large crowd. Based on Trustee's experience, this could yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances could maximize potential recovery for the estate such that the sale of the Estate Assets would be in the best interests of the estate if it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. Therefore, this sale may be an appropriate exercise of Trustee's business judgment and may be given deference.

Written opposition was not required and may be presented at the hearing. The court will inquire whether any parties in interest oppose.

10:30 AM

1. [23-10219](#)-B-11 **IN RE: WPI WATER RESOURCES, INC.**
[LKW-2](#)

MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE
PROTECTION
3-10-2023 [[38](#)]

WPI WATER RESOURCES, INC./MV
LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

WPI Water Resources, Inc. ("Debtor"), seeks authorization to use cash collateral and to provide adequate protection to the United States Small Business Administration ("SBA") and the State of California Employment Development Department ("EDD"). Doc. #38.

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

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

The SBA has a \$149,000.00 security interest in Debtor's personal property, including deposit accounts, accounts receivable, and other personal property assets, which has a combined value of \$157,472.04. *Ex. A*, Doc. #42.

The EDD has an \$81,747.76 security interest for state taxes in the same personal property assets, as well as an \$8,472.04 secured claim under 11 U.S.C. § 506(a) which are junior to the SBA's interest. *Exs. B-E, id.* However, there are also other liens junior and subordinate to SBA's and EDD's liens. These are outlined in Debtor's *Schedule D* and include the Tulare County Tax Collector, Unique Funding Solutions, LLC, Ariel Bouskila, Esq., and the California Department of Tax and Fee Administration. *Ex. F, id.*; Doc. #17. These additional liens should be deemed to be unsecured because SBA's and EDD's claims exceed the value of Debtor's assets. For that reason, Debtor claims its money on deposit in the amount of \$22,965.66 and accounts receivable in the amount of \$29,022.61 are not cash collateral of the additional lien claimants.

Debtor proposes to use cash collateral to pay payroll and rent and make adequate protection payments to SBA and EDD. Debtor's payroll expenses are \$40,000.00 per month, and rent is \$1,000.00 per month, so Debtor proposes to pay EDD and SBA each \$1,000.00 per month pending confirmation of a plan. Doc. #43.

Debtor is working to formulate a budget that will be used as part of its plan. However, since the payroll, rent, and the adequate protection payments will exceed the amount of cash collateral, Debtor contends a budget is not necessary.

11 U.S.C. § 1184 gives the subchapter V debtor in possession all rights, except the right to compensation under § 330, and powers of a trustee serving under this chapter, including operating the business of the debtor, and requires it to perform all functions and duties of a trustee, except those specified in § 106(a)(2)-(4).

Under 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral, or court authorization after notice and a hearing. § 363(c)(2). Under § 363(e), on request of an entity that has an interest in property used, or proposed to be used, the court shall prohibit or condition such use as is necessary to provide adequate protection of such interest. Though adequate protection is not specifically defined, § 361 provides that it may be provided when required by (1) requiring the debtor-in-possession to make a cash payment, or periodic cash payments, to the extent the use of cash collateral under § 363 diminishes the value of the entity's interest; (2) providing an additional or replacement lien to the extent such use diminishes the value of the entity's interest; and (3) granting such other relief that will result in the entity receiving the "indubitable equivalent" of its interest in property. The debtor-in-possession carries the burden of proof on the issue of adequate protection. § 363(p).

Adequate protection must be decided on a case-by-case basis, but the ultimate objective is the protection of a secured creditor from diminution in the value of its interest in the collateral during the period of use. *Resolution Tr. Corp. v. Swedeland Dev. Grp.* (*In re Swedeland Dev. Grp.*), 16 F.3d 552, 564 (3d Cir. 1994) ("[T]he whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.") (internal quotation omitted).

This matter will be called and proceed as scheduled. The court will inquire whether any parties in interest oppose.

11:00 AM

1. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[23-1008](#) [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
2-21-2023 [[9](#)]

VETTER V. PATEL ET AL
D. GARDNER/ATTY. FOR PL.

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

DISPOSITION: Continued to June 7, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

The parties stipulated to extend the time until May 5, 2023 for the defendants to respond to the complaint. Doc. #14. Accordingly, the status conference will be CONTINUED to June 7, 2023 at 11:00 a.m. The Plaintiff shall file and serve a status report not later than May 31, 2023.

2. [23-10008](#)-B-7 **IN RE: RODERICK FONSECA**
[23-1004](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
1-23-2023 [[12](#)]

FONSECA V. ALLISON ET AL

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Pro se debtor Roderick Olaf Fonseca ("Plaintiff") moves for entry of default judgment against Kathleen Allison, Rob Bonta, Brian Cates, and Arlene Barrera (collectively "Defendants"). Doc. #12.

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

Plaintiff filed this motion on a form from the United States Bankruptcy Court, Central District of California. This is the Eastern District of California. LBR 7055-1 requires a party seeking entry of default to submit a *Request for Entry of Default by Plaintiff(s)*

(local form EDC 3-726) and *Entry of Default and Order Re: Default Judgment Procedures* (local form EDC 3-727). LBR 7055-1.

Additionally, defendants Kathleen Allison and Rob Bonta have filed a motion to dismiss, which is the subject of matter #3 below. AGO-1.

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

3. [23-10008](#)-B-7 **IN RE: RODERICK FONSECA**
[23-1004](#) [AGO-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
2-22-2023 [[30](#)]

FONSECA V. ALLISON ET AL
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 hearing.

Kathleen Allison and Rob Bonta (collectively "Defendants") move to dismiss this adversary proceeding for failure to state a claim and lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure ("Civ. Rule") 12(b), *as incorporated by* Federal Rule of Bankruptcy Procedure ("Rule") 7012(b). Doc. #30.

Roderick-Olaf Fonseca ("Plaintiff") responded. Docs. #37; #39.

Defendants replied. Docs. #40; #41.

This matter will be called as scheduled because Plaintiff is *pro se*. The court intends to GRANT this motion and DISMISS THE ADVERSARY PROCEEDING.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

PROCEDURAL ISSUES

As an informative matter, the motion does not procedurally comply with the local rules.

First, LBR 7005-1 requires attorneys to prove service using the *Official Certificate of Service Form*, EDC 007-005. Here, no EDC 007-005 was used. Docs. ##33-34; #42. An official matrix from the clerk of

the court is not necessary because fewer than six parties were served, but the official EDC form is still required.¹

Second, LBR 9014-1(d)(1) requires every motion or other request for relief to be comprised of a motion, notice, evidence, and a certificate of service, and each of these documents must be filed separately. LBR 9004-2(c)(1), (e)(1). However, the motion and memorandum of points and authorities may be combined into a single document provided that it does not exceed six pages in length. LBR 9014-1(d)(4). Here, the primary document filed consists of a motion and notice of hearing combined into one document. Doc. #30.

Third, the notice of hearing did not comply with LBR 9014-1(d)(3)(B)(iii), which requires the objecting party to notify respondents that they can determine: (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. *Id.*

Typically, these procedural deficiencies would result in denial of the motion without prejudice. However, because this court clearly lacks subject matter jurisdiction and Plaintiff has undoubtedly failed to state a claim upon which relief can be granted, denial in this instance would unduly delay the efficient resolution of this adversary proceeding. Accordingly, the court will exercise its power under LBR 1001-1(f) to *sua sponte* suspend the above local rules in this instance only. Defendants' counsel is advised to review the local rules and ensure procedural compliance in subsequent matters.

REQUESTS JUDICIAL NOTICE

Defendants ask the court to take judicial notice of (1) the fact that defendant Rob Bonta assumed his position as the Attorney General of the State of California on April 23, 2021, (2) the fact that defendant Kathleen Allison was appointed as the Secretary of the California Department of Corrections and Rehabilitation ("CDCR") on October 1, 2020, (3) the amended criminal complaint filed in Plaintiff's criminal case on March 18, 2009 in Los Angeles Superior Court, Case No. LA0566786, (4) Plaintiff was convicted of these charges on March 18, 2009, and sentenced on April 9, 2009, and (5) information published on the by the U.S. Securities and Exchange Commission ("SEC"). Docs. #31; #41.

The court may take judicial notice of all documents and other pleadings filed in this case, filings in other court proceedings, and public records. Fed. R. Evid. 201; *Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the requested documents, but not the truth or falsity of such documents as related to findings of

fact and conclusions of law. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008). The court may take judicial notice of information published on government websites. *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

BACKGROUND

In December 2006, Plaintiff was convicted by a jury in Los Angeles County of committing a lewd act upon a child [Cal. Pen. Code ("PC") § 288(a)] and one count of aggravated sexual assault of a child, rape, and inflicting great bodily injury upon the victim [PC §§ 261(a)(2), 269(a)(1), 1192.7(c)(8)]. *Exs. C-D*, Doc. #31. Plaintiff was sentenced to a prison term of 40 years excluding his county jail term, as well as a restitution fine in the amount of \$7,500.00. *Ex. D, id.*

Plaintiff filed chapter 7 bankruptcy on January 3, 2023 and commenced this adversary proceeding against the defendants on January 23, 2023. Case No. 23-10008 (Bankr. E.D. Cal.). Plaintiff seeks to avoid his criminal indictment and conviction on grounds that it constitutes an illegal, enforceable contract. Doc. #1.

Defendants timely moved to dismiss. Doc. #30.

CONTENTIONS

Complaint

Plaintiff asserts the indictment leading to his conviction in Los Angeles County Superior Court is an "Executory Contract" because it lists two parties and bears a case or registration number. Doc. #1. First, since the indictment was formed without his knowledge or consent, Plaintiff argues it is an illegal contract that cannot be enforced. *Id.* Second, the names of the parties to the purported contract—Plaintiff and "THE PEOPLE OF THE STATE OF CALIFORNIA"—are spelled with capital letters, or "ALL-CAPS", and are not registered with the Secretary of State as corporations, so Plaintiff says they are not authorized to conduct business. *Id.* Plaintiff further contends the indictment unlawfully changed his name without his consent because the capitalization is different from his birth certificate. *Id.*

As of this writing, Plaintiff's chapter 7 discharge under 11 U.S.C. § 727 is pending. If entered, Plaintiff believes the scope of the discharge will include his criminal indictment, conviction, and sentencing. *Id.* It will not.

On this basis, Plaintiff prays this court order: (1) recall of his sentence, conviction, and all orders arising from the "illegal contract" as void; (2) recall of Plaintiff's "ENTIRE criminal convictions and ENTIRE records, as logically all such actions were also based on illegally formed Contracts"; (3) eradication of all records, debts, and created indemnities from all illegal contracts; (4) "ALL proceeds made from the illegal sale of the Surety Bond(s) and

other GSA Bond(s) created from the illegally formed contract(s), be returned to [Plaintiff] as he is the source of these funds"; (5) the U.S. Marshals Service to retrieve Plaintiff's "corpus" from the California Correctional Institution, Tehachapi, and return his "corpus" to his place of residence; and (6) "all Mutual Bond(s) funds be removed from the open market and proceeds from these bonds be returned to [Plaintiff] as they belong to the source ([Plaintiff])." *Id.* at 12.

Motion to Dismiss

Defendants move to dismiss this case under Civ. Rule 12(b)(1) for lack of subject matter jurisdiction because bankruptcy courts lack jurisdiction to consider Plaintiff's claims, and this court does not have the power to release Plaintiff from prison. Doc. #32. Additionally, since a criminal indictment is not a contract, Defendants contend Plaintiff has failed to state a claim for relief under Civ. Rule 12(b)(6). *Id.* Lastly, Defendants were not involved in the criminal action and are not proper parties to this action. *Id.*

Opposition

In response, Plaintiff argues Defendants' motion is not timely because Rule 7012(a) says an answer shall be filed "within" 30 days after issuance of the summons, and Defendants filed the motion on the 30th day. Opp. at 1-2, Doc. #37. When computing time, Rule 9006(a)(1)(C) provides that the last day of the period is to be included. Therefore, Defendants' motion was timely.

Next, Plaintiff argues Defendants' motion is not timely under Civ. Rule 12(c) and (h)(2)(B) because it was filed after the meeting of creditors, and all defendants had an opportunity to object. But Civ. Rule 12(c) and (h)(2)(B) are not applicable because this motion is brought under Civ. Rule 12(b). *Id.* at 2. Plaintiff acknowledges that this court is a unit of the district court but claims this adversary proceeding arises from a bankruptcy case because Plaintiff's discharge was entered, and the defendants did not appear at the meeting of creditors. *Id.* at 4-5.

Plaintiff includes as an exhibit results from a Committee of Uniform Securities Identification Procedures ("CUSIP") search, showing that a PIMCO StockPLUS fund bearing the symbol PSPRX and CUSIP 72200Q729 has net assets of \$1,965,849,000.00. Doc. #39. A CUSIP number identifies financial instruments and is used to facilitate the clearance and settlement process of securities. *Ex. E*, Doc. #41. Plaintiff claims the abstract of judgment for his criminal conviction is somehow a "Warehouse Receipt" and negotiable instrument, and the Secretary of the CDCR and agents are acting as a bailee charged with storing good for hire. Opp. at 7-8, Doc. #37. And since a Warehouse Receipt is a document of title, its holder is entitled to receive, hold, and dispose of the document and the goods it covers. *Ibid.* So, Plaintiff believes he is entitled to the entirety of this fund.

Plaintiff also contends Defendants failed to serve the other defendants, Brian Cates and Arlene Barrera. *Id.* at 9-10. Plaintiff further contends Defendants have not properly appeared, cannot cite unpublished cases, and did not file documents in the correct adversary proceeding. *Id.* at 11-12.

Reply

In reply, Defendants contend this court lacks subject matter jurisdiction, the complaint fails to allege the formation of a contract, (3) the motion was timely filed, (4) the motion properly cites case law authorities, (5) Defendants have not filed a motion for judgment on the pleadings, (6) this motion was properly served on Plaintiff, (7) defendant Cates was not served the adversary complaint, and (8) Defendants' counsel has properly appeared. Doc. #40.

DISCUSSION

Under Civ. Rule 12(b)(1), the court may dismiss a claim for failure to establish subject-matter jurisdiction. "Subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived." *United States v. Cotton*, 535 U.S. 625, 630 (2002). A plaintiff must plausibly allege all jurisdictional elements. *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014). "The burden of establishing subject matter jurisdiction rests on the party asserting that the court has jurisdiction." *Wilshire Courtyard v. Cal. Franchise Tax Bd. (In re Wilshire Courtyard)*, 729 F.3d 1279, 1284 (9th Cir. 2013). If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action. Civ. Rule 12(h)(3).

This court does not have subject matter jurisdiction over Plaintiff's claims because federal bankruptcy courts have no jurisdiction to invalidate the results of state criminal proceedings. *In re Gruntz*, 202 F.3d 1074, 1084 (9th Cir. 2000); *In re Bonilla*, No. 19-403, 2019 Bankr. LEXIS 2566 at **2-3 (N.D. Cal. Aug. 16, 2019). "[W]hen a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). "Although the writ of habeas corpus has common law roots and is protected in the Constitution, the power to award the writ by any of the courts of the United States must be given by written law – a statute." *In re Luckett*, 612 B.R. 408, 411 (Bankr. D.N.M. 2020).

Plaintiff materially misquotes the California Supreme Court for the premise that this court does not have jurisdiction to determine its own jurisdiction. The actual quote suggests the opposite. *Rescue Army v. Municipal Court of Los Angeles*, 28 Cal.2d 460, 464, 171 P.2d 8, 11 (1946) ("A court has jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act,

and it must have authority to decide that question in the first instance.") (emphasis added). Opp. at 3, Doc. #37.

Plaintiff's first two claims for recall of his criminal sentence and conviction seek to challenge his physical imprisonment, so a writ of habeas corpus is required. The power to consider a writ of habeas corpus is provided in 28 U.S.C. §§ 2241(a) and 2254(a) to any justice of the Supreme Court, the district courts, and any circuit judge in their respective jurisdictions. Federal bankruptcy courts are not federal district courts; rather, they "constitute a unit of the district court." 28 U.S.C. § 151. Bankruptcy courts have jurisdiction over bankruptcy matters by reference from the district court. 28 U.S.C. §§ 157(a), 1334. The limited authority of bankruptcy judges does not include the power to consider writs of habeas corpus, so this court lacks jurisdiction over Plaintiff's claims for release from prison.

Plaintiff's remaining claims for ordering (3) eradication of his criminal records, debts, and indemnities resulting from his conviction, (4) return of proceeds from the sale of bonds created from his conviction, (5) an order for the U.S. Marshals Service to return Plaintiff to his place of residence, and (6) the removal of mutual bonds or funds associated with his criminal case from the open market and return of proceeds to the Plaintiff, are derivative of his request for release from prison. These claims necessarily depend on Plaintiff successfully challenging the fact or duration of his confinement, and therefore fall within the scope of habeas corpus. *Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (en banc). Therefore, this court lacks subject matter jurisdiction to hear Plaintiff's complaint in this adversary proceeding under Civ. Rule 12(b)(1).

Additionally, Cal. Civ. Code § 1608 is inapplicable because neither Plaintiff's criminal conviction nor his indictment are an "illegal contract." Under California law, an indictment is not a contract; rather, it is an accusatory pleading in a criminal action. PC § 691(c). An indictment contains the allegations of a grand jury. *Guillory v. Superior Court*, 31 Cal. 4th 168, 173 (2003), citing *People v. Superior Court (Gevorgyan)*, 91 Cal. App. 4th 602, 611-12 (2001). After an indictment is presented to the superior court, it becomes the accusatory pleading of the prosecutor and initiates a criminal action, which is a proceeding by which a party charged with a public offense is accused and brought to trial and punishment. *Id.*; PC § 683. A conviction for a public offense arises upon a guilty verdict from a jury that is accepted and recorded by a court of competent jurisdiction, or by finding of the court if a jury has been waived, or by a plea of guilty. PC § 689.

To state a contract claim, a plaintiff must necessarily plead that a contract was formed, which requires details of the terms and its formation, including mutual assent consisting of an offer and acceptance. *Netbula LLC v. BindView Dev. Corp.*, 516 F. Supp. 2d 1137, 1155 (N.D. Cal. 2007) (mutual assent accomplished when a specific

offer is communicated to an offeree and acceptance is communicated to the offeror). Here, the complaint fails to allege that the prosecutor in Plaintiff's criminal case made an offer to issue an indictment to the Plaintiff, which the Plaintiff then accepted. Therefore, Plaintiff's claim that the indictment was the basis of the formation of a contract fails to state a claim for relief under Civ. Rule 12(b)(6).

CONCLUSION

This matter will be called and proceed as scheduled. The court intends to GRANT the motion and DISMISS the adversary complaint for lack of subject matter jurisdiction. The dismissal is without prejudice but leave to amend will not be granted. Since this court has no subject matter jurisdiction to adjudicate Plaintiff's confinement and the indictment by which Plaintiff is confined is not a contract, the court finds that any amendment to the complaint cannot cure the legal defects. *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016).

¹ See Official Certificate of Service Form Information (Bankr. E.D. Cal.), <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited Mar. 30, 2023).

4. [22-11350](#)-B-7 **IN RE: RAYMOND PEYTON (C)**
[23-1003](#) [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
1-23-2023 [7]

PEYTON V. ALLISON ET AL

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

DISPOSITION: Continued to May 3, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

On March 13, 2023, the defendants filed a motion to dismiss for lack of subject matter jurisdiction. Docs. ##36-38. The following day, the court issued an order to show cause why this case should not be dismissed for lack of subject matter jurisdiction. Doc. #39. Both are set for hearing on May 3, 2023.

Accordingly, this status conference will be CONTINUED to May 3, 2023 at 11:00 a.m. to be heard in connection with the motion to dismiss and order to show cause.

11:30 AM

1. [23-10034](#)-B-7 **IN RE: BRYAN VALDEZ**

REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.
2-16-2023 [[16](#)]

R. BELL/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between debtor Bryan Valdez and Santander Consumer USA, Inc., for a 2013 Chevrolet Silverado was filed on February 16, 2023. Doc. #16.

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