

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Friday, April 22, 2022
Place: Department B – Courtroom #13
Fresno, California

The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [21-10300](#)-B-13 **IN RE: DONALD/STEPHANIE SALKIN**
[MHM-5](#)

MOTION TO DISMISS CASE
3-11-2022 [\[82\]](#)

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

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtors that is prejudicial to creditors and 11 U.S.C. § 1307(c)(6) for failure to complete the terms of the confirmed plan. Doc #82. Debtors 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 debtors, 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.

The record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and the debtors failed to comply with the annual review provisions provided for by the plan (11 U.S.C. § 1307(c)(6)).

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 and 11 U.S.C. § 1307(c)(6) for a material default by the debtors with respect to a term of confirmed plan.

In addition, the trustee has reviewed the schedules and determined that without debtors amending exemptions, there are little to no assets for liquidation. Doc. #84.

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

2. [22-10502](#)-B-13 **IN RE: JOSE ARREGUIN**
[DJP-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
3-31-2022 [\[12\]](#)

SANDRA DUNCAN/MV
DON POOL/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.

Mid Valley Services, Inc. and Sandra L. Duncan (collectively "Movant") move for an order confirming the absence of the automatic stay in this bankruptcy case because this is Jose R. Arreguin's ("Debtor") third bankruptcy in the one-year period preceding the petition date. Doc. #12.

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

As a preliminary matter, the *Declaration of Don J. Pool in Support of Motion to Confirm Absence of Automatic Stay* and its attached exhibits do not comply with the local rules. Doc. #14. LBR 9004-2(c) (1) requires declarations, exhibits, and other specified pleadings to be filed as separate documents. Moreover, LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, the declaration contained an attached exhibit document. *Id.* The exhibit was not filed separately, did not include an exhibit index, and was not consecutively numbered, including separator, cover, or divider sheets. Counsel is advised to review the local rules on the court's website to ensure procedural compliance in subsequent motions.¹ Future violations of the local rules may result in the matter being denied without prejudice.

Movant asks the court to take judicial notice of the docket in Debtor's previous bankruptcy case, Case No. 21-12030-B-13, as well as an order approving a joint stipulation between Debtor and Movant in that case. Doc. #15. The court may take judicial notice of all documents and other pleadings filed in this case, in Debtor's other bankruptcy cases, 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).

Under 11 U.S.C. § 362(c) (4) (A), if a debtor has two or more cases pending within the previous year that were dismissed, the automatic stay will not go into effect when the latter case is filed. The stay may be reimposed under § 362(c) (4) (B), but such request must be heard within 30 days.

Here, Debtor has had two cases pending within the previous year that were dismissed:

- (1) Case No. 21-12030-B-13 was filed on August 20, 2021 and dismissed on January 27, 2022 for failure to pay plan payments.
- (2) Case No. 20-12291-A-13 was filed on July 8, 2020 and dismissed on June 16, 2021 for failure to pay plan payments.

Debtor has also filed three other bankruptcy cases, but those were not pending within the previous one-year period.²

After the last case was dismissed January 27, 2022, Movant sought to enforce its lien against real property located at 33207 West El Progresso Avenue, Cantua Creek, California 93608. Doc. #14. A non-judicial foreclosure sale was scheduled on March 28, 2022. However, Debtor filed this bankruptcy case on March 28, 2022. Doc. #1. On April

15, 2022, this case was dismissed for failure to timely file necessary documents. Doc. #18.

Movant asserts that the automatic stay did not go into effect upon the filing of this case and seeks a comfort order confirming the same under § 362(c)(4)(A)(ii) and (j) so that it can complete its foreclosure. Doc. #12. Additionally, Movant notes the joint stipulation with Debtor resolving its objection to plan confirmation in the last case provided that Movant would be paid interest on its claim at a rate of 6% and that "[i]n the event that the instant Chapter 13 is dismissed for any reason, [Movant] shall have Section 362(d)(4) relief (in rem as the Property) [sic] with regard to any subsequent filing / attempt to refile." Case No. 21-12030, Doc. #52. That stipulation was approved on January 7, 2022. *Id.*

On request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect under § 362(c)(4)(A)(ii). This matter will be called as scheduled. The court intends to GRANT the motion and confirm that no stay is in effect.

¹ See LBR (eff. Apr. 12, 2021), <http://www.caeb.uscourts.gov/LocalRules.aspx>.

² Those cases: (3) Case No. 18-10851-A-13 filed March 9, 2018 and dismissed March 27, 2018 for failure to pay plan payments; (4) Case No. 16-10651-A-7 filed March 3, 2016 and Debtor received a chapter 7 discharge on July 18, 2016; and (5) Case No. 98-11935-A-13 filed March 3, 1998 and Debtor received a chapter 13 discharge on July 11, 2001.

3. [22-10005](#)-B-13 **IN RE: PATRICIA TESSENDRE**
[MHM-2](#)

MOTION TO DISMISS CASE
3-22-2022 [[23](#)]

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

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

DISPOSITION: Granted; case converted to chapter 7 unless the motion is withdrawn before the hearing.

ORDER: 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 (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors and failure to commence timely making plan payments. Doc. #23. Trustee's attorney Kelsey A. Seib declares Debtor has failed to make all required payments due under the plan. Doc. #25. As of March 22, 2022, Debtor is delinquent \$1,906.48. An additional payment of

\$1,906.48 will become due on March 25, 2022 for a total of \$3,812.96 due by the hearing.

Patricia Marie Tessendore ("Debtor") did not respond.

Unless the Trustee's motion is withdrawn before the hearing, the motion will be GRANTED without oral argument for cause shown, and the case will be CONVERTED TO CHAPTER 7.

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)(4) for failing to commence making plan payments.

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and Debtor has failed to commence making plan payments (11 U.S.C. § 1307(c)(4)). As of As of March 22, 2022, Debtor is delinquent \$1,906.48, with another plan payment due on March 25, 2022 in the amount of \$1,906.48. Doc. #25.

Trustee has reviewed the schedules and Debtor has opted to use the exemption scheme outlined in Cal. Code Civ. Proc. §§ 704.010, *et seq.* Doc. #25. If this case were converted to chapter 7, Trustee has determined that this case has a liquidation value of \$44,993.61, which consists of non-exempt equity in real property that could be liquidated for the benefit of allowed unsecured claims. Therefore, conversion, rather than dismissal, better serves the interests of creditors and the estate.

Accordingly, the motion will be GRANTED, and the case CONVERTED TO CHAPTER 7.

4. [21-12407](#)-B-13 **IN RE: MANUELA BETTENCOURT**
[SDS-2](#)

MOTION TO CONFIRM PLAN
3-11-2022 [[51](#)]

MANUELA BETTENCOURT/MV
SUSAN SILVEIRA/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.

Manuela Bettencourt ("Debtor") seeks an order confirming the Second Amended Chapter 13 Plan (Doc. #33) dated December 2, 2021. Doc. #51. The plan proposes that Debtor shall pay \$915.00 for one month, then \$1,309.00 for 35 months, with a 9% dividend paid to allowed unsecured claims. Doc. #33. No party in interest filed written opposition.

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

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

5. [21-12723](#)-B-13 **IN RE: MARK SCHAFER**
[GEG-2](#)

MOTION TO CONFIRM PLAN
3-2-2022 [\[24\]](#)

MARK SCHAFFER/MV
GLEN GATES/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.

Mark Louie Schafer ("Debtor") seeks an order confirming the Second Amended Chapter 13 Plan (Doc. #26) dated March 2, 2022. Doc. #24. The plan proposes that Debtor shall make plan payments of \$1,661.00 per month, plus submission of \$500.00 per month in rents, for 60 months with a 100% distribution to allowed nonpriority unsecured claims. Doc. #26. No party in interest filed written opposition.

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

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

6. [21-12734](#)-B-13 **IN RE: HAROLD FARRIS**
[CJK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
RELIEF FROM CO-DEBTOR STAY
3-22-2022 [\[27\]](#)

BANK OF AMERICA, N.A./MV
GABRIEL WADDELL/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Bank of America, N.A. ("Movant") seeks relief from the automatic stay and the co-debtor stay pursuant to 11 U.S.C. §§ 362(d) and 1301 with respect to real property located at 10138 N. Spanish Bay Dr., Fresno, CA 93720 ("Property"). Doc. #27.

Movant seeks to commence all acts necessary under applicable non-bankruptcy law to enforce its rights and remedies against the Property. Movant also requests that the order be binding and effect despite any conversion of this bankruptcy case to any other chapter, and waiver of the 14-day stay under Federal Rule of Bankruptcy Procedure 4001(a)(3). *Id.*

Harold Wayne Farris ("Debtor") did not oppose. However, through his attorney Gabriel J. Waddell, Debtor stipulated to stay relief on January 11, 2022. Doc. #31, *Ex. 6*.

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 debtor, the co-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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make

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

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

11 U.S.C. § 1301(c)(2) allows the court, on request of a party in interest and after notice of hearing, to grant relief from the co-debtor stay of § 1301(a) to the extent that the plan does not provide to pay for such claim.

Movant contends that cause exists to lift the automatic stay because Debtor did not claim an interest in Property in the schedules, did not provide for payment of the claim through the confirmed chapter 13 plan, and executed a stipulation agreeing to stay relief. Doc. #30. Moreover, cause exists to lift the co-debtor stay because non-filing co-debtor Judy Wathen-Farris aka Judy Marie Wathen-Farris is liable under the note and deed of trust with Debtor

Debtor filed bankruptcy on November 29, 2021. Doc. #1. Debtor's Chapter 13 Plan (Doc. #3) dated November 29, 2021 was confirmed on February 3, 2022. Doc. #22. The plan does not provide for Movant. Under Section 3.11(b) of the confirmed plan, secured claims not listed as Class 1, 2, 3, or 4 are not provided for by the plan, which may be cause to terminate the automatic stay. Doc. #3. Such relief must be separately requested by the claim holder, which Movant has done here.

After review of the included evidence, the court finds that "cause" exists to lift the automatic and co-debtor stay because the plan does not provide for Movant and Debtor has agreed to stay relief.

Accordingly, this motion will be GRANTED pursuant to 11 U.S.C. §§ 362(d)(1) and 1301(c)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. The order will not provide for relief if the case is converted to another chapter. The imposition of the automatic stay is determined by operation of law.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because Debtor consents to termination of the automatic stay.

7. [19-11740](#)-B-13 **IN RE: RICHARD/VERONICA ESPINOZA**
[MHM-2](#)

MOTION TO DISMISS CASE
3-11-2022 [[68](#)]

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

Since posting the original pre-hearing dispositions, the court has changed its intended ruling on this matter.

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this motion on April 21, 2022. Doc. #73. Accordingly, the motion is dismissed, and the hearing will be DROPPED FROM CALENDAR.

8. [19-12446](#)-B-13 **IN RE: CARLOS/BRANDI MOLINA**
[PBB-3](#)

CONTINUED MOTION TO MODIFY PLAN
3-7-2022 [[53](#)]

BRANDI MOLINA/MV
PETER BUNTING/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.

Carlos Antonio Molina and Brandi Hodges Molina ("Debtors") seek an order confirming the Second Modified Chapter 13 Plan (Doc. #58) filed March 7, 2022. Doc. #53. The plan proposes that Debtors shall pay \$2,050.00 per month for 32 months and \$660.00 per month for the remaining 28 months with a 0% dividend to be distributed to allowed, non-priority unsecured claims. *Id.*, ¶ 3.14. In contrast to the First Modified Chapter 13 Plan (Doc. #9) dated June 18, 2019, this is a reduction from 60 payments of \$2,050.00 per month with a 27% dividend to allowed, non-priority unsecured claims. No party in interest filed written opposition.

This matter was originally set for hearing on April 7, 2022. Doc. #54. The court continued the hearing to April 22, 2022 after Debtors'

counsel appeared at the hearing to orally request a continuance. Docs. ##63-64. Thus, the motion was set for this continued 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 it shall reference the plan by the date it was filed.

9. [21-10047](#)-B-13 **IN RE: JASON ATHERTON AND GENZZIA DOVIGI-ATHERTON**
[MHM-1](#)

MOTION TO DISMISS CASE
3-11-2022 [\[38\]](#)

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

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtors that is prejudicial to creditors and 11 U.S.C. § 1307(c)(6) for failure to complete the terms of the confirmed plan. Doc #38. Debtors 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 debtors, 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.

The record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and the debtors failed to comply with the annual review provisions provided for by the plan (11 U.S.C. § 1307(c)(6)).

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 and 11 U.S.C. § 1307(c)(6) for a material default by the debtors with respect to a term of confirmed plan.

In addition, the trustee has reviewed the schedules and determined that without debtors amending exemptions, there is little to no assets for liquidation. Doc. #40.

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

10. [20-10550](#)-B-13 **IN RE: RICARDO GONZALEZ AND VERONICA JUAREZ**
[MHM-2](#)

MOTION TO DISMISS CASE
3-11-2022 [\[61\]](#)

MICHAEL MEYER/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtors that is prejudicial to creditors and for failure to complete the terms of the confirmed plan under 11 U.S.C. § 1307(c)(6). Doc #61. Debtors 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 debtors, 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.

The record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and debtors have failed to make required plan payments (11 U.S.C. § 1307(c)(6)). As of March 11, 2022, debtors are delinquent \$1,228.03, with another plan payment due on March 25, 2022 in the amount of \$1,500.00. Doc. #63

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 and 11 U.S.C. § 1307(c)(6) for a material default by the debtors with respect to a term of confirmed plan.

In addition, the trustee has reviewed the schedules and determined that without debtors amending exemptions, there is little to no assets for liquidation. Doc. #63.

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

11. [20-13563](#)-B-13 **IN RE: VICTOR FIGUEROA LUA**
[MHM-1](#)

MOTION TO DISMISS CASE
3-11-2022 [\[21\]](#)

MICHAEL MEYER/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors and for failure to complete the terms of the confirmed plan under 11 U.S.C. § 1307(c)(6). Doc #21. 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.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and debtor has failed to make required plan payments (11 U.S.C. § 1307(c)(6)). As of March 11, 2022, debtor is delinquent \$3,614.13, with another plan payment due on March 25, 2022 in the amount of \$1,925.18. Doc. #23

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 and 11 U.S.C. § 1307(c)(6) for a material default by the debtor with respect to a term of confirmed plan.

In addition, the trustee has reviewed the schedules and determined that without debtor amending exemptions, there is little to no assets for liquidation. Doc. #23.

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

12. [19-10181](#)-B-13 **IN RE: ARNULFO/LETICIA OLGUIN**
[PBB-4](#)

MOTION TO MODIFY PLAN
3-14-2022 [\[86\]](#)

LETICIA OLGUIN/MV
PETER BUNTING/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.

Arnulfo Jesus Olguin and Leticia Olguin ("Debtors") seek an order confirming their Third Modified Chapter 13 Plan (Doc. #91) dated March 14, 2022. Doc. #86. The plan proposes that Debtors shall pay an aggregate of \$50,767.00 in the first 38 months, then \$800.00 per month for 22 months, with a 30% dividend to allowed, non-priority unsecured claims. Doc. #91. In contrast to the Second Modified Chapter 13 Plan (Doc. #69) dated June 12, 2019, this is a reduction from an aggregate payment of \$2,958.00 in the first 4 months, then \$1,475.00 per month for 56 months, with a 41% dividend to allowed, non-priority unsecured claims. Doc. #69. No party in interest 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 it shall reference the plan by the date it was filed.

13. [21-12591](#)-B-13 **IN RE: MICHELLE FRANCO**
[PLG-2](#)

OBJECTION TO CLAIM OF PINNACLE SERVICE SOLUTIONS LLC, CLAIM
NUMBER 13
3-9-2022 [[22](#)]

MICHELLE FRANCO/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

Michelle L. Franco ("Debtor") objects to Proof of Claim No. 13-1 filed by Pinnacle Service Solutions, LLC, on January 8, 2022 in the amount of \$10,836.97. Doc. #22. Debtor objects under Federal Rule of Bankruptcy Procedure 3001(c)(3)(A) because the claim does not provide the date of the account holder's last transaction, the date of the last payment on the account, and the date on which the account was charged to profit and loss.

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

The notice of hearing omitted mandatory language directing respondents to the court's website. Doc. #23. LBR 9014-1(d)(3)(B)(iii) 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.

For the above reason, this objection will be OVERRULED WITHOUT PREJUDICE.

14. [19-15396](#)-B-13 **IN RE: JUAN/MARYLOU BARRAGAN**
[MHM-3](#)

MOTION TO DISMISS CASE
3-11-2022 [\[72\]](#)

MICHAEL MEYER/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted; case converted to chapter 7 unless the motion
is withdrawn before the hearing.

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)(1) for unreasonable delay by debtor that is prejudicial to creditors and for failure to complete the terms of the confirmed plan under 11 U.S.C. § 1307(c)(6). Doc #72. Trustee's attorney Kelsey A. Seib declares Debtors are delinquent \$11,920.00 as of March 10, 2022. Doc. #74. An additional payment of \$3,000.00 will become due on March 25, 2022 for a total of \$14,920.00 due by the hearing.

Juan Barragan and Marylou Barragan ("Debtors") did not oppose.

Unless the Trustee's motion is withdrawn before the hearing, the motion will be GRANTED without oral argument for cause shown, and the case will be CONVERTED TO CHAPTER 7.

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)(1) and (c)(6) for failing to complete the terms of a confirmed plan.

The record shows that there has been unreasonable delay by the Debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and Debtors have failed comply with the terms of a confirmed plan by failing to make required plan payments (11 U.S.C. § 1307(c)(6)). As of March 10, 2022, Debtors are delinquent \$11,920.00, with another plan payment due on March 25, 2022 in the amount of \$3,000.00. Doc. #74.

Trustee has reviewed the schedules and Debtors have opted to use the exemption scheme outlined in Cal. Code Civ. Proc. §§ 704.010, *et seq.* *Id.* If this case were converted to chapter 7, Trustee has determined that this case has a liquidation value of \$125,659.02, which consists of non-exempt equity in co-owned real property, a vehicle, tools, inventory, and a bank account that could be liquidated for the benefit of allowed unsecured claims. Therefore, conversion, rather than dismissal, better serves the interests of creditors and the estate.

Accordingly, the motion will be GRANTED, and the case CONVERTED TO CHAPTER 7.

11:00 AM

1. [13-11337](#)-B-13 **IN RE: GREGORY/KARAN CARVER**
[22-1001](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-6-2022 [[1](#)]

CARVER ET AL V. SETERUS INC.
ET AL
NANCY KLEPAC/ATTY. FOR PL.

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

DISPOSITION: Continued to June 1, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

Debtors Gregory Thomas Carver and Karan Ann Carver ("Plaintiffs") timely served the *Reissued Summons and Notice of Status Conference in an Adversary Proceeding* (Doc. #8) on Nationstar Mortgage LLC d/b/a Mr. Cooper LLC, and Gregory Funding Inc. ("Defendants") on March 9, 2022. Doc. #10. The summons was reissued on March 8, 2022, so the deadline for Defendants to file and serve an answer was April 7, 2022. No such answer has been filed.

This matter will be CONTINUED to June 1, 2022 at 11:00 a.m. Plaintiffs are directed to seek entry of default. If the defaults are entered before the continued hearing date, the status conference will be further continued to the "prove-up" hearing date. If defaults are not entered or a "prove-up" hearing is not set, the court will issue an order to show cause re: dismissal of this adversary proceeding for lack of prosecution.

2. [20-11296](#)-B-7 **IN RE: KYLE/DEANNA MAURIN**
[20-1044](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
7-10-2020 [[1](#)]

KAPITUS SERVICING, INC. V.
MAURIN
MICHAEL MYERS/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.