

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, May 5, 2021
Place: Department B – 510 19th Street
Bakersfield, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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.

9:00 AM

1. [18-13708](#)-B-13 **IN RE: LEONARDO CHAVEZ**
[NSV-6](#)

CONTINUED MOTION TO MODIFY PLAN
2-19-2021 [\[82\]](#)

LEONARDO CHAVEZ/MV
NIMA VOKSHORI/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

Leonardo J Chavez ("Debtor") had until April 21, 2021 to file and serve a written response to chapter 13 trustee Michael H. Meyer's opposition to plan confirmation, or until April 28, 2021 to file a modified plan and set it for hearing. Doc. #100. Debtor filed a modified plan on April 16, 2021, which is set for hearing on May 26, 2021 at 9:30 a.m. See NSV-7. Accordingly, this matter will be dropped from calendar as moot because Debtor filed a modified plan.

2. [20-13208](#)-B-13 **IN RE: ELIZABETH MARTIN AND AARON HAMPTON**
[MHM-2](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
2-25-2021 [\[38\]](#)

PHILLIP GILLET/ATTY. FOR DBT.

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

DISPOSITION: Sustained. The court sets July 7, 2021 as a bar date by which a chapter 13 plan must be confirmed or the case will be dismissed.

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

Elizabeth Leigh Martin and Aaron Scott Hampton ("Debtors") had until April 21, 2021 to file and serve a written response to chapter 13 trustee Michael H. Meyer's objection to confirmation, or until April

28, 2021 to file and serve a modified plan and set it for hearing. Doc. #65. Debtors did neither. Therefore, Trustee's objection will be SUSTAINED.

Since this case has been pending for over six months without having confirmed a chapter 13 plan, and because Debtors neither filed a response to the Trustee's objection nor a modified plan, the court will set July 7, 2021 as a bar date pursuant to § 1324(b) by which a chapter 13 plan must be confirmed, or the case will be dismissed on Trustee's declaration.

3. [20-13208](#)-B-13 **IN RE: ELIZABETH MARTIN AND AARON HAMPTON**
[RPZ-2](#)

MOTION TO RECONSIDER
4-14-2021 [\[70\]](#)

PRAVATI SPV LL, LLC/MV
PHILLIP GILLET/ATTY. FOR DBT.
ROBERT ZAHRADKA/ATTY. FOR MV.
OST 4/15/21

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.

This motion to reconsider was filed with an order shortening time and on at least 14 days' notice under Local Rule of Practice ("LBR") 9014-1(f)(2) and (3). Consequently, Elizabeth Leigh Martin and Aaron Scott Hampton ("Debtors"), chapter 13 trustee Michael H. Meyer ("Trustee"), the Office of the U.S. Trustee ("UST"), and any other parties in interest were not required to file a written response or opposition to the motion and this matter will proceed as scheduled.

Pravati SPV II, LLC ("Creditor") seeks reconsideration of the order overruling its Objection to Confirmation of Debtors' Chapter 13 Plan. Doc. #70.

This motion will be DENIED AS MOOT.

Creditor requested an order shortening time to reduce the 28-day notice requirement imposed by Fed. R. Bankr. P. 2002(b) on hearings to consider confirmation of the chapter 13 plan. The order shortening time specified that that the motion must be served with at least 7 days' notice by email or first-class mail on the UST, Trustee, Debtors, and Debtors' counsel. Doc. #73. Creditor served all of the requisite parties by first-class U.S. mail on April 15, 2021. Doc. #76.

Previously, the court overruled Creditor's objection because it was 21 days late under LBR 3015-1(c)(4) and General Order 20-02. See

Docs. ##64, 67. General Order 20-02 extends the deadline under LBR 3015-1(c)(4) for objections to plan confirmation to seven days after the § 341 meeting is concluded and not continued to a further date. See Am. Gen. Order 20-02, at 4, ¶ 5 (Am. Apr. 16, 2020).

Since the § 341 meeting of creditors was concluded on February 23, 2021, the deadline for objections to plan confirmation under LBR 3015-1(c)(4) was March 2, 2021. Creditor's objection was filed on March 23, 2021, which is untimely because it is 28 days after the meeting of creditors concluded and 21 days after the deadline passed.

Fed. R. Civ. P. 60(b)(1) (made applicable by proceedings under Fed. R. Bankr. P. 9024) allows the court, on motion and just terms, to relieve a party or its legal representative from a final order or judgment for mistake, inadvertence, surprise, or excusable neglect. Courts are permitted "*where appropriate* to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control." *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd P'ship*, 507 U.S. 380, 388 (1993) (emphasis added).

When considering whether the failure is "excusable," the court must consider "all relevant circumstances surrounding the party's omission," including "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id.* at 396.

Creditor's attorney, Robert P. Zahradkha ("Counsel"), states that Creditor failed to timely file the objection due to his failure to properly calendar the correct deadline. Doc. #70. Counsel declares that he mistook the deadlines in LBR 3015-1(c)(4) with LBR 3015-1(d), and therefore assumed timely filing would be 14 days before the confirmation hearing that was scheduled for April 7, 2021. Doc. #71. Since the Creditor filed its motion to reconsider less than a week from the date of the entered order, Counsel asks that his neglect not be imputed onto Creditor to revive Creditor's objection to confirmation. *Id.* Counsel's sincere apology is appreciated.

The court would consider the excusable neglect claims if Trustee's objection had been overruled and Debtors' current plan were facing confirmation, but that is not the case here.

Per the court's previous ruling on Trustee's objection in matter #3 above, the Debtors had until April 21, 2021 to file a response to Trustee's objection, or April 28, 2021 to file a modified plan. Debtors did neither, so Trustee's objection is sustained. As result, this motion to reconsider is moot because the underlying untimely objection is moot. Debtors must file a modified plan, or their case will be dismissed.

As Counsel is well aware after having thoroughly studied LBR 3015-1(d)(1), Debtors must provide 35 days' notice to Creditor prior to

the next confirmation hearing, and then Creditor may object to the next plan at least 14 days before such confirmation hearing. Therefore, this motion will be DENIED AS MOOT.

4. [21-10027](#)-B-13 **IN RE: ELIZABETH JOHNSON**
[MHM-1](#)

MOTION TO DISMISS CASE
3-12-2021 [\[26\]](#)

MICHAEL MEYER/MV
CHINONYE UGORJI/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 Systems, 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.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because debtor has failed to make all payments due under the plan (11 U.S.C. § 1307(c)(4)). Debtor is delinquent in the amount of \$5,321.58. Doc. #28. Before this hearing, March and April payments will come due, each in the amount of \$7,321.58. *Id.* Debtor did not oppose.

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

U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to timely make payments due under the plan.

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

5. [14-11633](#)-B-13 **IN RE: SANTOS/ELVIRA ORNELAS**
[PK-8](#)

MOTION TO AVOID LIEN OF DISCOVER BANK
4-20-2021 [\[125\]](#)

ELVIRA ORNELAS/MV
PATRICK KAVANAGH/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 Moving Party will submit a proposed order after 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.

Santos Ornelas and Elvira Ornelas ("Debtors") filed this motion seeking to avoid a judicial lien in favor of Discover Bank ("Creditor") encumbering residential real property located at 872 Pheasant Run Drive, Shafter, CA 93263 ("Property"). Doc. #125. No party in interest was required to file written opposition.

In the absence of opposition, this motion will be GRANTED.

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$6,230.00 on November 18, 2013. Doc. #129, Ex. D. The abstract of judgment issued on December 17, 2013 and recorded in

Kern County on December 27, 2013. *Id.* That lien attached to Debtors' interest in Property. Doc. #127. As of the petition date, Property had an approximate value of \$322,281.00. Doc. #17, Schedule A. The unavoidable liens totaled \$234,154.98 on that same date, consisting of a deed of trust in favor of Wells Fargo Mortgage. *Id.*, Schedule D. Debtors claimed an exemption pursuant to California Civ. Proc. Code ("C.C.P.") § 704.730 in the amount of \$100,000.00. *Id.*, Schedule C. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date		\$322,281.00
Total amount of unavoidable liens	-	\$234,154.98
Remaining available equity	=	\$88,126.02
Debtors' homestead exemption	-	\$100,000.00
Creditor's judicial lien	-	\$6,230.00
Extent Debtors' exemption impaired	=	(\$18,103.98)

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

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, this motion will be GRANTED.

6. [21-10537](#)-B-13 **IN RE: MAGDALINO DIMPAS**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK
MELLON
3-25-2021 [\[13\]](#)

THE BANK OF NEW YORK MELLON/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled.

The Bank of New York Mellon ("Creditor") objects to plan confirmation because the plan does not account for the entire amount of the pre-petition arrearages that the debtor owes to Creditor and the plan does not promptly cure Creditor's pre-petition arrears as required by 11 U.S.C. § 1322(b)(5). Doc. #13. Creditor also objects to the feasibility of the plan since it relies on contribution income of \$700.00 per month "as needed" and requests verification of this contribution income as received on a monthly basis by affidavit from the contributor. *Id.*

Magdalino Mata Dimpas, Jr. ("Debtor"), timely responded to say that the objection is being resolved with counsel, which "should be memorialized by the hearing date." Doc. #18.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Doc. #4, § 3.02. Creditor's proof of claim, filed March 23, 2021, states a claimed arrearage of \$12,313.90. Claim #2, ¶ 9. This claim is classified in Class 1 - paid by the chapter 13 trustee. Plan section 3.07(b)(2) states that if a Class 1 creditor's proof of claim demands a higher or lower post-petition monthly payment, the plan payment shall be adjusted accordingly.

Debtor's plan understates the amount of arrears. The plan states arrears of \$10,000.00. Doc. #4, § 3.07. Creditor's claim states arrears of \$12,313.90. Though plan section 3.02 provides that it is the proof of claim, and not the plan itself, that determines the amount that will be repaid, section 3.07(b)(2) requires that the payment be adjusted accordingly for a Class 1 claim.

Schedule I references "as needed" \$700 per month contributions from Debtor's mother. This is problematic without substantial additional proof. See *In re Cregut*, 69 B.R. 21 (Bankr. D. Ariz., 1986) (monthly payments from parent to student a gift not regular income); *In re Welsh*, No. 02-21197, 2003 WL 25273855 (Bankr. D. Idaho, February 26, 2003) (debtor must prove ability and motivation of "family friend" to make payments under plan); 11 U.S.C. § 101(10A)(B) to be "Current Monthly Income" contribution must be on a regular basis. "As needed" is not regular.

This matter will be called as scheduled to inquire whether Debtor and Creditor reached a resolution. In the absence of a resolution, this objection may be SUSTAINED.

7. [21-10143](#)-B-13 **IN RE: GUILLERMO/ELA ALVARADO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
4-5-2021 [\[13\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to June 2, 2021 at 9:00 a.m.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to plan confirmation because the plan does not provide for all of the debtors' projected disposable income to be applied to unsecured creditors under the plan as required by 11 U.S.C. § 1325(b). Doc. #13. Trustee also disputes certain expenses deducted on Debtors' Form 122C-2.

Opposition was not required and may be presented at the hearing.

Guillermo Alvarado and Ela Melissa Alvarado ("Debtors") filed bankruptcy on January 25, 2021. Doc. #1. According to Form 122C-1, Debtors are above median income for a household of their size. *Id.* Form 122C-2 lists disposable income of \$253.37, but Debtors note a recent net income increase of \$488.33, which would give them a total disposable income of \$741.70. Doc. #1, Form 122C-2, ¶¶ 45-46. Over 60 months, after accounting for attorney fees of \$3,400.00, Debtors would have \$41,102.00 in disposable income to pay towards the plan.

Trustee says that the plan proposes to pay 10% to general unsecured creditors, which is only \$28,403.90 and less than Debtors' disposable income of \$41,102.00. Doc. #13.

Trustee also disputes these expenses deducted on Form 122C-2:

Line	Form 122C-2 Deduction	Amount
16	Taxes	\$2,928.01
7	Out-of-pocket health care allowance	\$280.00
22	Additional health care expenses	\$220.00
26	Cont'd contribs. to care of household/family member	\$700.00
31	Continuing charitable contribution	\$100.00

Trustee declares that Debtors have failed to support any of these deductions. Doc. #15. Debtors deduct \$2,928.01 for taxes but have provided no analysis demonstrating how this amount was calculated. Trustee contends Debtors' paystubs indicate neither debtor pays SDI and only one joint debtor pays FICA. Debtors also claim pre-tax deductions and child credits prior to COVID-19. *Id.*

Debtors claim \$280.00 on line 7 and \$220.00 on line 22 for out-of-pocket medical expenses. Doc. #1, Form 122C-2. Trustee says that Debtors' 2020 tax returns show that Debtors' out-of-pocket medical expenses for the entire year of 2020 was \$2,429.00 total, or \$202.42 per month. Doc. #15. Trustee argues therefore that Debtors have failed to demonstrate the deductions for medical expenses claimed by Debtors. *Id.*

Debtors also deduct \$700.00 on line 26 for continuing contribution to the care of a household or family member. Doc. #1, Form 122C-2. But Trustee insists that Debtors have not met their burden to demonstrate that the contribution meets the requirements in *In re Hicks*, 370 B.R. 919, 922-23 (E.D. Mo. 2007). Doc. #13.

Debtors also deduct \$100.00 on line 31 for continuing charitable contributions. Doc. #1, Form 122C-2. Trustee declares that Debtors'

2020 tax return shows total charitable contributions of \$300.00 for 2020, or \$25.00 per month. Doc. #15.

This matter will be called as scheduled. The court is inclined to CONTINUE the objection to June 2, 2021 at 9:00 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the Debtors shall file and serve a written response not later than May 19, 2021. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by May 26, 2021.

If the Debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than May 26, 2021. If the Debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

8. [20-12848](#)-B-13 **IN RE: PATRICK/MARIBETH TABAJUNDA**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
3-2-2021 [\[55\]](#)

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

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

This motion to dismiss was withdrawn by the chapter 13 trustee on April 30, 2021. Doc. #80. Accordingly, this matter will be dropped from calendar.

9. [20-12848](#)-B-13 **IN RE: PATRICK/MARIBETH TABAJUNDA**
[RSW-4](#)

MOTION TO CONFIRM PLAN
3-24-2021 [\[59\]](#)

MARIBETH TABAJUNDA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

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

Patrick B. Tabajunda and Maribeth E. Tabajunda ("Debtors") seek confirmation of their First Modified Chapter 13 Plan (Doc. #63). Doc. #59.

Chapter 13 trustee Michael H. Meyer ("Trustee") initially objected to plan confirmation because the plan did not provide for submission of all or such portion of Debtors' future earnings or other income to the supervision and control of the Trustee to execute the plan as required by 11 U.S.C. § 1322(a). Doc. #75.

On April 30, 2021, the Trustee and Debtors jointly filed a stipulation resolving Trustee's objection. Doc. #77. The parties also included an exhibit with a proposed order confirming plan approved by Debtors' counsel, Trustee, and class 2 creditor Department of the Treasury. Doc. #78, Ex. A. Trustee simultaneously withdrew the objection to confirmation. Doc. #77.

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

10. [18-11964](#)-B-13 **IN RE: PAUL/MICHELLE ESPARZA**
[MHM-3](#)

CONTINUED STATUS CONFERENCE RE: NOTICE OF CHAPTER 13
TRUSTEE'S FORBEARANCE
3-19-2021 [[74](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer ("Trustee") withdrew this
forbearance status conference request on April 20, 2021. Doc. #81.
Accordingly, this matter will be dropped from calendar.

11. [21-10391](#)-B-13 **IN RE: SHARON PARKS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-24-2021 [[28](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.
\$157.00 INSTALLMENT PAID 4/1/21

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that an installment payment of \$157.00 was paid on
April 1, 2021. Therefore, the Order to Show Cause will be vacated.
The case shall remain pending.

The order permitting the payment of filing fees in installments will
be modified to provide that if future installments are not received
by the due date, the case will be dismissed without further notice
or hearing.

12. [20-11896](#)-B-13 **IN RE: MARTIN/EVANGELINA MENDOZA**
[MHM-2](#)

OBJECTION TO CLAIM OF LVNV FUNDING INC./RESURGENT CAPITAL
SERVICES, CLAIM NUMBER 3
3-2-2021 [\[68\]](#)

MICHAEL MEYER/MV
WILLIAM OLCOTT/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, 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 Systems, 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.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Proof of Claim No. 3 filed by LVNV Funding, LLC as serviced by Resurgent Capital Services ("Creditor") on June 9, 2020 in the sum of \$438.51 and seeks that it be disallowed in its entirety. Doc. #68.

This objection will be SUSTAINED.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

Trustee has established that the statute of limitations in California bars a creditor's action to recover on a contract, obligation, or liability founded on an oral contract after two years

and one founded on a written instrument after four years. See California Code of Civil Procedure §§ 312, 337(1), and 339. A claim that is unenforceable under state law is also not allowed under 11 U.S.C. § 502(b)(1) upon objection. *In re GI Indust., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

Here, the last transaction on the account according to the evidence was on May 5, 2006, which is well past the four-year mark in the statutes of limitations for a written contract under California law.

Therefore, claim no. 3 filed by LVNV Funding, Inc. will be disallowed in its entirety.

10:00 AM

1. [20-13806](#)-B-7 **IN RE: MARIA/ISIDRO GARCIA**
[DMG-2](#)

MOTION TO AVOID LIEN OF FINANCIAL CREDIT NETWORK, INC.
4-7-2021 [\[22\]](#)

ISIDRO GARCIA/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Maria Olga Garcia and Isidro Garcia ("Debtors") filed this motion seeking to avoid a judicial lien in favor of Financial Credit Network, Inc. ("Creditor"), and encumbering residential real property located at 2226 Norwalk St., Delano, CA 93215 ("Property"). Doc. #22. No party in interest timely filed written opposition.

This motion will be GRANTED.

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

Here, a judgment was entered against Debtors in favor of Creditor in the sum of \$23,503.43 on July 6, 2009. Doc. #24, Ex. A. The abstract of judgment was issued on September 9, 2009 and recorded in Kern County on September 30, 2009. *Id.* That lien attached to Debtors' interest in Property. Doc. #25. Creditor sought to renew the judgment on April 19, 2019 in the amount of \$46,490.50. Doc. #24, Ex. B.

As of the petition date, Property had an approximate value of \$170,000.00. Doc. #1, Schedule A/B. The unavoidable liens totaled \$11,000.00 on that same date, consisting of a deed of trust in favor of Bank of America. *Id.*, Schedule D. Debtors claimed an exemption pursuant to California Civ. Proc. Code ("C.C.P.") § 704.730 in the amount of \$159,000.00. *Id.*, Schedule C. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date		\$170,000.00
Total amount of unavoidable liens	-	\$11,000.00
Remaining available equity	=	\$159,000.00
Debtors' homestead exemption	-	\$159,000.00
Creditor's renewed judicial lien	-	\$46,490.50
Extent Debtors' exemption impaired	=	(\$46,490.50)

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

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). No party in interest timely filed written opposition. Therefore, this motion will be GRANTED.

2. [15-14827](#)-B-7 **IN RE: BRIAN HOVEN**
[LKW-8](#)

MOTION TO COMPEL ABANDONMENT
4-20-2021 [\[136\]](#)

BRIAN HOVEN/MV
LEONARD WELSH/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 Moving Party will submit a proposed order after 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.

Brian Hoven ("Debtor") asks this court to compel the chapter 7 trustee, Jeffrey M. Vetter ("Trustee"), to abandon the estate's interest in Debtor's sole proprietorship business, "Hoven's Automotive, Inc." a Debtor's mechanic business. Doc. #136.

Trustee filed non-opposition to the motion on April 28, 2021. Doc. #142.

In the absence of further opposition, the court is inclined to GRANT this motion.

The assets ("Business Assets") include the following:

Asset	Value	Exemption Amount	C.C.P. § 703.140	Net Value
2003 Ford F350 Truck	\$14,600.00	\$14,600.00	(b) (2), (5)	\$0.00
2014 Utility Trailer	\$1,000.00	\$1,000.00	(b) (5)	\$0.00
Office Equipment	\$2,000.00	\$2,000.00	(b) (6)	\$0.00
Machinery and Equipment	\$15,000.00	\$15,000.00	(b) (5), (6)	\$0.00
Inventory	\$2,000.00	\$2,000.00	(b) (5)	\$0.00
Totals:	\$34,600.00	\$34,600.00	-	\$0.00

Docs. #138; #133, Schedule A/B. The Business Assets consist of a truck, trailer, office furnishings and equipment, machinery and equipment used in Debtor's automotive shop, and inventory with a total value of \$34,600.00. *Id.* All Business Assets have been exempted for their full value under California Code of Civil Procedure ("C.C.P.") §§ 703.140(b)(2), (5), and (6). Debtor contends that if the Business Assets were liquidated by Trustee, the costs of sale would exceed any net return to the estate. Doc. #138, ¶ 5.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not

mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

The court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and exempted in their entirety. See Doc. #133, Schedules A/B & C. Therefore, this motion will be GRANTED.

The order shall include a specific list of the property abandoned.

3. [20-10259](#)-B-7 **IN RE: JOSE URIBE RIZO AND LORENZA URIBE**
[ORS-3](#)

AMENDED MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
3-24-2021 [\[45\]](#)

OSCAR SWINTON/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Jose Jaime Uribe Rizo and Lorenza Uribe ("Debtors") filed this motion to convert the case from chapter 7 to chapter 13 under 11 U.S.C. § 706(a). Doc. #45. This is Debtors' fourth attempt at conversion, with three previous motions having been denied for procedural defects.

This motion will be GRANTED.

First, the court notes that Debtors originally filed this motion with the wrong hearing date in the caption page. See Docs. ##40-43. Two days later, Debtors filed an amended motion, notice, and declaration. Docs. ##45-48. Debtors used the same Docket Control

Number ("DCN") for both motions: ORS-3. Although LBR 9004-2(a)(6), (b)(5), (b)(6), (e), and LBR 9014-1(c) and (e)(3) require a unique DCN to be in the caption page on all documents filed in every matter court with each new motion containing a new DCN, the amended motion (Doc. #45) is merely a correction for the original motion (Doc. #40), so inclusion of the same DCN is acceptable in this instance.

11 U.S.C. § 706(a) allows a debtor in chapter 7 to convert to chapter 13 "at any time," unless the case was previously converted to chapter 7 from another chapter.

However, the Supreme Court in *Marrama v. Citizens Bank*, 549 U.S. 365, 371-72 (2007), held that a debtor does not have an absolute right to convert a chapter 13 under § 706(a), but also must be eligible to be a debtor under chapter 13. The Supreme Court held that "[i]n practical effect, a ruling that an individual's Chapter 13 case should be dismissed or converted to Chapter 7 because of prepetition bad-faith conduct, including fraudulent acts committed in an earlier Chapter 7 proceeding, is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13." Therefore, the court must find that the debtor is eligible to be a debtor under chapter 13 in conformance with 11 U.S.C. § 1307(c).

The court finds that this case has not been previously converted to chapter 7 from another chapter, and that the Debtors are eligible to be debtors under chapter 13 in conformance with 11 U.S.C. § 1307(c). Debtors do not appear to have any prior bankruptcy filings and this case has not been previously converted under 11 U.S.C. §§ 1112, 1208, or 1307.

The Office of the United States Trustee ("UST") filed a statement of presumed abuse under 11 U.S.C. § 707(b). Doc. #16. This statement appears to be what prompted Debtors to seek conversion. While the UST did note that a presumption of abuse had arisen based on documents submitted, UST notably has not filed opposition to this motion nor a motion to dismiss this case.

Accordingly, this motion will be GRANTED, and the case shall be converted to chapter 13.

4. [17-13869](#)-B-7 **IN RE: CHARLES JOHNSON**
[DMG-2](#)

MOTION TO AVOID LIEN OF CACH, LLC
4-16-2021 [\[33\]](#)

CHARLES JOHNSON/MV
D. GARDNER/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Charles Carter Johnson, Jr. ("Debtor"), withdrew this motion on April 21, 2021. Doc. #39. Accordingly, this matter will be dropped from calendar.

5. [17-13869](#)-B-7 **IN RE: CHARLES JOHNSON**
[DMG-3](#)

MOTION TO AVOID LIEN OF CACH, LLC
4-21-2021 [\[41\]](#)

CHARLES JOHNSON/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Charles Carter Johnson, Jr. ("Debtor"), seeks to avoid a judicial lien in favor of CACH, LLC ("Creditor").

This motion will be DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

First, the notice of hearing (Doc. #42) did not contain the language required under Local Rule of Practice ("LBR") 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires the movant to notify respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view pre-hearing dispositions by checking the court's website at www.caeb.uscourts.gov after 4:00

p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

Here, the notice of hearing directed respondents to find the tentative rulings at "www.cae.uscourts.gov" after 4:00 p.m. the day before the hearing. Doc. #42. This is not the correct URL for the court's website and respondents will not be able to locate pre-hearing dispositions at this location.

Second, the motion states that the judicial lien is an abstract of judgment recorded pursuant to a judgment obtained against the Debtor in Kern County Superior Court. Doc. #41, ¶ 2. Debtor, meanwhile, declares that Exhibit A is a true and correct copy of the abstract of judgment against his residence. Doc. #43, ¶ 3. But the abstract of judgment attached in Exhibit A does not appear to have been recorded. Doc. #44, Ex. A.

Under Cal. Civ. Proc. Code § 697.310, a judgment lien on real property is created by recording an abstract of judgment with the county recorder.

Here, judgment was entered on April 28, 2017 in the sum of \$17,802.38. *Ibid.* The abstract of judgment was issued on July 12, 2017, but there is no evidence that it was ever recorded. Debtor filed bankruptcy on October 5, 2017. Doc. #1. If Creditor failed to record the abstract of judgment before the petition date, the automatic stay may have prevented Creditor from creating a judgment lien.

The court is unable to avoid a lien under 11 U.S.C. § 522(f) where it is unclear whether the lien exists. Debtor has therefore failed to make a *prima facie* showing that he is entitled to the relief sought.

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

6. [21-10574](#)-B-7 **IN RE: MARK/JEANNETTE ESPARZA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-23-2021 [\[15\]](#)

WILLIAM EDWARDS/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 3/30/21

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee of \$338.00 was paid in full on March 30, 2021. Therefore, the Order to Show Cause will be vacated. The case shall remain pending.

7. [18-12786](#)-B-7 **IN RE: CRISTAL HERRERA**
[CJK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-18-2021 [\[70\]](#)

LAKEVIEW LOAN SERVICING,
LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order and the Moving Party shall subsequently submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice 9014-1(f)(1).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). Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, 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 movant, Lakeview Loan Servicing, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 1929 18th Avenue, Delano, California 93215 ("Property"). Doc. #70.

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 debtor has failed to make at least 43 complete pre- and post-petition payments. The Movant has produced evidence that debtor is delinquent at least \$41,260.86 and the entire balance of \$164,451.78 is due. Doc. #72.

¹ Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rule" will be to the Federal Rules of Bankruptcy Procedure; and "Civil Rule" will be to the Federal Rules of Civil Procedure.

However, the court intends to call this matter and conditionally grant the motion. Movant has failed to comply with the Federal Rules of Bankruptcy Procedure as to proper service of the moving papers.

Rule 4001(a)(1) requires motions for relief from the automatic stay to be "made in accordance with Rule 9014[.]" Rule 9014(b) requires the motion be served in the manner provided for service of a summons and complaint by Rule 7004. Meanwhile, Rule 9036 allows for service by electronic means, but "[t]his rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004." Rule 9036.

Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rules 7004(b)(1), (b)(3). This service requirement is not subject to waiver under Civil Rule 4(d). See Rule 7004(a)(1).

Here, the certificate of service indicates that UST was served "via Notice of Electronic Filing[.]" Doc. #75. Movants must serve or notify the UST, who may raise, appear, and be heard on any issue in any case under 11 U.S.C. § 307. Because relief is not being sought against the UST specifically, electronic notification under Rule 7005 and LBR 7005-1 is sufficient in this instance.

LBR 7005-1(a) allows for service by electronic means pursuant to Civil Rule 5(b)(2)(E), as made applicable by Rule 7005. But this rule typically only applies to pleadings filed after the original complaint and other papers specified in Civil Rule 5(a)(1). LBR 7005-1(d) states, in relevant part:

1) Upon Those Parties Consenting to Service by Electronic Means. Service by electronic means pursuant to Fed. R. P. 5(b)(2)(E) shall be accomplished by transmitting an email which includes as a PDF attachment the document(s) served. The subject line of the email shall include the words "Service Pursuant to Fed. R. Civ. P. 5," and the first line of the email shall include the case or proceeding name and number and the title(s) of the document(s) served.

. . .

3) Certificate of Service. The certificate of service shall include all parties served, whether by electronic or conventional means. Where service was accomplished by electronic means, the certificate of service shall include the email addresses to which the document(s) were transmitted, and the party, if any, whom the recipient represents.

LBR 7005-1(d)(1) & (3). Movant's certificate of service does not comply with LBR 7005-1(d)(3) because it does not include UST's email address. Doc. #75. This motion cannot be served "via Notice of

Electronic Filing[.]” As noted above, even though Rule 7004 governs proof of service for relief from stay motions, the court will allow electronic service on the UST in this instance because no relief is being sought from the UST, but Movant must comply with LBR 7005-1(d)(3) and include UST’s email address in the certificate of service.

Therefore, this motion will be CONDITIONALLY GRANTED to allow the Movant to properly serve the UST as stated above. The Certificate of Service shall be filed not later than May 12, 2021. The court will issue an order.

After that date, the Movant shall submit an order granting the motion pursuant to 11 U.S.C. § 362(d)(1) 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. No other relief is awarded. The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

11:00 AM

1. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[18-1006](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
2-5-2018 [\[1\]](#)

PACE DIVERSIFIED CORPORATION
ET AL V. MACPHERSON OIL
T. BELDEN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [20-13346](#)-B-7 **IN RE: RAMON GUTIERREZ**
[21-1007](#)

STATUS CONFERENCE RE: COMPLAINT
2-16-2021 [\[1\]](#)

FIRST NATIONAL BANK OF OMAHA
V. GUTIERREZ
CORY ROONEY/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

The parties filed a stipulation regarding this adversary proceeding on April 19, 2021. Doc. #9. Although the stipulation states that the parties "desire to resolve this matter without further litigation" and agree that "the sum of **\$6,400.00** shall be due and owing and Plaintiff shall be granted judgment of nondischargeability against Defendant in this amount[,]" the stipulation does not dismiss the adversary proceeding. In fact, Plaintiff reserves the right to pursue any legally available remedy without further notice in the event of default, which appears to include prosecution of this adversary proceeding.

It is not clear to the court what this stipulation is trying to accomplish. It suggests resolution of the matter but then provides for further litigation if the proposed payments are not made. It also seems to suggest that the parties want to have the court enter a judgment pursuant to stipulation. But there is no judgment. Do the parties agree that a judgment is entered for \$6,400.00 but not enforced if payments are made? Does it mean no judgment entered until the payments are missed? If the latter, what will be the judgment amount? Does it mean something else?

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

3. [20-10465](#)-B-7 **IN RE: JASPREET DHILLON**
[20-1065](#)

CONTINUED SCHEDULING CONFERENCE RE: COMPLAINT, AND JURY
DEMAND
12-9-2020 [[1](#)]

ATCHLEY ET AL V. DHILLON
WILLIAM ALEXANDER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

The court notes chapter 7 trustee Jeffrey M. Vetter's ("Trustee") motion to approve a "global settlement" in Jaspreet Dhillon's ("Defendant") main bankruptcy case, which is set for hearing on May 11, 2021. See *In re Jaspreet Dhillon*, case no. 20-10465-BK-7, DMG-2. While the settlement agreement is only between the estate and Debtor's ex-spouse, Harjeet K. Randhawa, Trustee declares that Virginia Lee Atchley ("Plaintiff") and Ms. Randhawa have also reached a settlement that is anticipated to cause this proceeding to be dismissed. *Id.*, Doc. #45, ¶ 6c. No such agreement signed by Plaintiff or Defendant has been filed with the court.

This matter will be called as scheduled to inquire as to the parties' intentions. The court may continue this scheduling conference pending the outcome of Trustee's motion to approve settlement with Ms. Randhawa.

11:30 AM

1. [21-10010](#)-B-7 **IN RE: JOSE AYON QUINTERO**

PRO SE REAFFIRMATION AGREEMENT WITH FIRST TECH FEDERAL
CREDIT UNION
3-30-2021 [\[14\]](#)

LEROY AUSTIN/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 will inform debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

2. [20-13799](#)-B-7 **IN RE: MICHAEL/LUPE FOGLESONG**

REAFFIRMATION AGREEMENT WITH NAVITAS CREDIT CORP.
3-30-2021 [\[21\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship. Although the debtor's attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtor would be able to make the payments.