



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, May 30, 2024
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann (1) only, (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [24-10405](#)-A-13 **IN RE: JAVIER PENA**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-8-2024 [\[14\]](#)

SCOTT LYONS/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The objection to confirmation was withdrawn on May 13, 2024. Doc. #24.

2. [24-10611](#)-A-13 **IN RE: HERIBERTO ZURITA CARRILLO AND MARIA ZURITA**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
5-10-2024 [\[18\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The objection to confirmation was withdrawn on May 16, 2024. Doc. #28.

3. [24-10413](#)-A-13 **IN RE: DOUGLAS MORAZAN-MOLINA**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-8-2024 [\[18\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

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

presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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.

Douglas Omar Morazan-Molina ("Debtor") filed his chapter 13 plan (the "Plan") on March 2, 2024. Plan, Doc. #11. The chapter 13 trustee ("Trustee") initially objected to confirmation of the Plan on the grounds that: (1) the meeting of creditors had yet to be concluded as Debtor failed to provide several documents; and (2) Debtor has not filed all applicable tax returns required by 11 U.S.C. § 1325(a)(9). Doc. #18. At the initial hearing on this objection to confirmation held on April 25, 2024, the court continued this matter to May 30, 2024. Order, Doc. #22. On April 29, 2024, Trustee filed a supplemental objection to confirmation stating that while the meeting of creditors is now concluded, Trustee still objects to confirmation because (1) Debtor has failed to provide a domestic support obligation checklist or signed authorization to release information form, and (2) Debtor has not filed his 2022 tax returns. Doc. #24.

11 U.S.C. § 1325(a)(1) requires the Plan to comply with the provisions of this chapter and with the other applicable provisions of this title. 11 U.S.C. § 1325(a)(1). Trustee contends Debtor has failed to provide a domestic support obligation checklist or signed authorization to release information form. Doc. #24.

Section 1325(a)(9) of the Bankruptcy Code requires that Debtor has filed all applicable federal, state and local tax returns as required by 11 U.S.C. § 1308. Debtor did not file his 2022 tax returns before the meeting of creditors was concluded. Claim 2-1; Doc. #24.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

4. [24-10515](#)-A-13 **IN RE: ISIDRO PARGA**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-8-2024 [\[13\]](#)

STEVEN ALPERT/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The objection to confirmation was withdrawn on May 22, 2024. Doc. #24.

5. [22-12124](#)-A-13 **IN RE: RAXL FONTENOT**
[PBB-1](#)

MOTION TO MODIFY PLAN
4-19-2024 [\[34\]](#)

RAXL FONTENOT/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.

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

This motion is 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. [24-10624](#)-A-13 **IN RE: DAVID WOODRUFF**
[LGT-1](#)

MOTION TO DISMISS CASE
4-29-2024 [\[22\]](#)

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

DISPOSITION: Granted.

ORDER: The court will issue an 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 at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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 default of the debtor is entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #22. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) provide Trustee with any requested documents; (2) file a complete plan (section 3.14 has been left blank); (3) file tax returns for the years 2022 and 2023; and (4) file accurate and/or complete schedules and statements. Id. The debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors because the debtor failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4), failed to file complete and accurate schedules and statements, and failed to file a complete chapter 13 plan.

Because the debtor has failed to file accurate and complete schedules and provide required information to Trustee, dismissal rather than conversion is appropriate.

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

7. [24-10328](#)-A-13 **IN RE: ISRAEL/ROSA TORRES**
[MAZ-1](#)

MOTION TO CONFIRM PLAN
4-8-2024 [\[27\]](#)

ROSA TORRES/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The chapter 13 trustee timely opposed this motion but withdrew her opposition. Doc. ##46, 50. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the

granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the non-responding parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

This motion is 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.

8. [24-10540](#)-A-13 **IN RE: ANGEL/KELLI MORA**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-8-2024 [\[15\]](#)

STEVEN ALPERT/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The objection to confirmation was withdrawn on April 26, 2024. Doc. #20.

9. [23-10947](#)-A-13 **IN RE: SONIA LOPEZ**
[SDS-4](#)

MOTION FOR COMPENSATION FOR SUSAN D. SILVEIRA, DEBTORS ATTORNEY(S)
5-2-2024 [\[106\]](#)

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.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved

without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Silveira Law Offices ("Movant"), counsel for Sonia Lopez ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$20,525.00 and reimbursement for expenses in the amount of \$125.86 for services rendered from April 11, 2023 through April 10, 2024.¹ Doc. ##106, 108. Debtor's confirmed plan provides, in addition to \$1,000.00 paid prior to filing the case, for \$24,000.00 in attorney's fees to be paid through the plan. Plan, Doc. ##71, 74. No prior fee application has been filed.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) fact gathering and filing chapter 13 case; (2) preparing and filing petition, schedules, and related forms; (3) preparing and filing amended petition, schedules and related forms; (4) attending meeting of creditors; (5) preparing and confirming Debtor's plan; (6) preparing fee application; and (7) general case administration. Exs. A & B, Doc. #108. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$20,525.00 and reimbursement for expenses in the amount of \$125.86 to be paid in a manner consistent with the terms of the confirmed plan.

10. [24-11047](#)-A-13 **IN RE: HUGO MARTINEZ RODRIGUEZ**
[SW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-29-2024 [\[10\]](#)

JCAP MAGELLAN FUND LLC/MV
ANDREW STILL/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.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The

¹ While the motion states that the time period for of the current application is April 11, 2023 to April 10, 2023, the supporting exhibits indicate that the time period is April 11, 2023 to April 10, 2024. Doc. #108. The court will use the time period for services rendered of April 11, 2023 to April 10, 2024.

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

The movant, JCAP Magellan Fund, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(4) with respect to real property located at 2401 E. Hedges Avenue, Fresno, California 93703 (the "Property"). Doc. #10. Movant requests relief from the automatic stay to proceed under applicable non-bankruptcy law to exercise its rights and remedies to foreclose upon and obtain possession of the Property. Id. Movant contends that Hugo Martinez Rodriguez ("Debtor") is the recipient of an unauthorized transfer of an interest in the Property along with Valentin C. Velasco ("Borrower") and Estela Perez Plascencia ("Co-Debtor"), who both filed bankruptcy cases previously to prevent the foreclosure of the Property. Id.

Movant requests the court take judicial notice of true and correct copies of the following documents: (1) Grant Deed made by Valentin C. Velasco in favor of Valentin Arturo Carrillo Perez, see Ex. 8, Doc. #14; (2) Grant Deed made by Valentin Arturo Carrillo Perez in favor of Valentin C. Velasco and Estela Perez Plascencia, see Ex. 9, Doc. #14; (3) United States Bankruptcy Court for the Eastern District of California ("Bankruptcy Court") docket for the case In re Valentin Carrillo Velasco, Case No. 24-10046 (Bankr. E.D. Cal.), see Ex. 10, Doc. #14; (4) Bankruptcy Court docket for the case In re Estela Perez Plascencia, Case No. 24-10398 (Bankr. E.D. Cal.), see Ex. 11, Doc. #14; (5) Bankruptcy Court docket for the case In re Estela Perez Plascencia, Case No. 24-10702 (Bankr. E.D. Cal.), see Ex. 12, Doc. #14; and (6) Grant Deed made by Valentin C. Velasco and Estela Perez Plascencia in favor of Valentin C. Velasco, Estela Perez Plascencia and Hugo Martinez Rodriguez, see Ex. 13, Doc. #14.

This court may take judicial notice of and consider the records in this bankruptcy case, filings in other court proceedings, and public records. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the existence of exhibits 1 through 6 but does not take judicial notice of the truth or falsity of the contents of any such document for the purpose of making a finding of fact. In re Harmony Holdings, LLC, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008) (collecting cases).

Movant holds a first-priority security interest in the Property pursuant to a pre-petition loan ("Loan") made to Borrower. Ex. 1, Doc. #14. Borrower defaulted on the Loan by not making paying all payments due under the Loan, including not paying the Loan in full by the maturity date of September 1, 2023. Decl. of Robert Eakin, Doc. #13. Pre-petition, Movant initiated non-judicial foreclosure proceedings of the Property and scheduled a trustee's sale of the Property for January 12, 2024. Id. However, the foreclosure sale of the Property was stayed multiple times due to the following:

- (1) On January 10, 2024, just two days prior to the foreclosure sale, Borrower filed a chapter 13 bankruptcy case. Case No. 24-10046,

Doc. #1. That case was dismissed on February 8, 2024 for Borrower's failure to file documents timely. Case No. 24-10046, Doc. #25.

- (2) On January 9, 2024, Borrower transferred the Property to himself and Co-Debtor. Ex. 9, Doc. #14. After Borrower's bankruptcy case was dismissed, and prior to the continued foreclosure sale date set for February 23, 2024, Co-Debtor filed a chapter 7 bankruptcy case on February 22, 2024. Eakin Decl., Doc. #13; Case No. 24-10398, Doc. #1. That case was dismissed on March 11, 2024 for Co-Debtor's failure to file documents timely. Case No. 24-10398, Doc. #17.
- (3) On March 21, 2024, the day prior to the continued foreclosure sale, Co-Debtor filed a chapter 13 bankruptcy case. Eakin Decl., Doc. #13; Case No. 24-10702, Doc. #1. That case was dismissed on April 19, 2024 for Co-Debtor's failure to file documents timely. Case No. 24-10702, Doc. #20.
- (4) On April 24, 2024, Borrower and Co-Debtor transferred the Property to themselves and Debtor. Ex. 13, Doc. #14. On April 25, 2024, a day prior to the continued foreclosure sale, Debtor filed this chapter 13 bankruptcy case. Eakin Decl., Doc. #13; Doc. #1

Movant learned of the existence of each of the bankruptcy filings just days prior to each scheduled foreclosure date. Eakin Decl., Doc. #13.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause. "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.

Movant claims its interest in the Property is not adequately protected because the Loan fully matured on September 1, 2023 and neither Debtor, Borrower or Co-Debtor has made any payments since that time. Doc. #10; Eakin Decl., Doc. #13. Further, neither Debtor, Borrower or Co-Debtor is paying property taxes, the accrual of which has continually reduced Movant's equity in the Property and constitutes a cause for relief from the automatic stay. Id.

After review of the evidence, the court finds that cause exists under 11 U.S.C. § 362(d)(1) to grant Movant relief from the automatic stay. The Loan is in default and has matured, and Movant has been unable to foreclose on the Property due to the successive bankruptcy cases filed by Borrower, Co-Debtor and Debtor. Eakin Decl., Doc. #13.

To obtain relief under § 362(d)(4), the moving party must show, and the court must affirmatively find, three elements: (1) the debtor's bankruptcy filing must have been part of a scheme; (2) the object of the scheme was to delay, hinder, or defraud creditors; and (3) the scheme involved either (i) the transfer of some interest in the real property without the secured creditor's consent or court approval or (ii) multiple bankruptcy filings affecting the property. 11 U.S.C. § 362(d)(4); First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

The court finds that Movant has made the requisite showing for relief under § 362(d)(4). Specifically, the court finds that Debtor's bankruptcy case was part of a scheme with Borrower and Co-Debtor and the objective of that scheme was to delay and hinder Movant's ability to foreclose on the Property. In addition, the scheme involved both the transfer of some interest in the Property without Movant's consent as well as multiple bankruptcy filings affecting the Property. Based on the evidence before the court, Debtor, Borrower and Co-Debtor have transferred the Property without Movant's consent

three separate times and has placed the Property into bankruptcy on four different occasions just before Movant's scheduled foreclosure sale of the Property. Eakin Decl., Doc. #13. Each of the prior bankruptcy cases were filed pro se and were dismissed for the failure of the filing debtor to timely file schedules, statements of financial affairs or, where appropriate, chapter 13 plans. Id.; Case No. 24-10046, Doc. #25; Case No. 24-10398, Doc. #17; Case No. 24-10702, Doc. #20. Borrower and Co-Debtor transferred the Property to themselves and Debtor just two days before a scheduled continued foreclosure sale of the Property and one day before Debtor filed this chapter 13 bankruptcy case. Eakin Decl., Doc. #13; Ex. 13; Doc. #13; Doc. #1. As with the bankruptcy cases filed by Borrower and Co-Debtor, Debtor's bankruptcy case was filed without schedules, statements of financial affairs or a chapter 13 plan. Doc. #9. Debtor sought and obtained an extension of time until May 23, 2024 to file the missing documents. Doc. ##19, 21. To date, Debtor has not filed the missing documents.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to proceed under applicable non-bankruptcy law to exercise its rights and remedies to foreclose upon and obtain possession of the Property. Further, pursuant to 11 U.S.C. § 362(d)(4), the order shall be binding in any other case under Title 11 of the United States Code purporting to affect the Property for two years after the date of the entry of the order.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived in light of the actions of Borrower, Co-Debtor and Debtor to hinder and delay the rights of Movant.

11. [24-10354](#)-A-13 **IN RE: ORLAND FERGUSON**
[LGT-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-29-2024 [\[21\]](#)

LILIAN TSANG/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The objection to the debtor's claim of exemption was withdrawn on May 15, 2024. Doc. #28.

12. [24-10363](#)-A-13 **IN RE: ADRIANA GARIVAY DE LA TORRE**
[MGG-1](#)

MOTION TO CONFIRM PLAN
4-16-2024 [\[22\]](#)

ADRIANA GARIVAY DE LA TORRE/MV
MATTHEW GRECH/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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

DISPOSITION: Granted.

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

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

This motion is 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. [24-10570](#)-A-13 **IN RE: GUILLERMO/PATRICIA DIAZ**
[PBB-1](#)

MOTION TO CONFIRM PLAN
4-22-2024 [\[26\]](#)

PATRICIA DIAZ/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.

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of

the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is 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.

14. [24-10970](#)-A-13 **IN RE: YAHAIIRA FLORENTINO TAVERAS**
[PK-1](#)

AMENDED MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY,
AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
5-24-2024 [\[49\]](#)

SBE, LP/MV
JULIE NONG/ATTY. FOR DBT.
PATRICK KAVANAGH/ATTY. FOR MV.
RESPONSIVE PLEADING
CONVERTED TO CHAPTER 7 ON 5/15/2024

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if the chapter 7 trustee was served by mail and consents to notice on shortened time.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On May 16, 2024, the debtor timely filed written opposition ("Opposition"). Doc. #40. While the failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion, cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995), the debtor converted her chapter 13 case to chapter 7 after this motion was filed and served. Doc. ##17, 21, 33.

As a procedural matter, the chapter 7 trustee is the representative of the chapter 7 bankruptcy estate and must be served by mail with a motion for relief from the automatic stay. 11 U.S.C. § 323(a); Fed. R. Bankr. P. 4001(a)(1), 7004(b)(1), 9014(b). Per documents filed on May 24, 2024, the moving party amended the motion and re-noticed it under LBR 9014-1(f)(2). Doc. #50. It appears that the moving party may have provided notice of the motion to the chapter 7 trustee less than 14 days prior to the hearing date without an order shortening time and permitted any opposition by the chapter 7 trustee to be provided at the hearing. Id. However, there is no certificate of service showing when and how the amended pleadings were served on the chapter 7 trustee. Unless a certificate of service is filed showing service by mail on the chapter 7 trustee and the chapter 7 trustee affirmatively consents to

shortened time, this matter will be continued to permit proper service of the motion on the chapter 7 trustee. Since the hearing on this motion was originally set by the moving party more than 30 days after the motion was filed, the time limitations under 11 U.S.C. § 362(e)(1) may have been waived. To the extent 11 U.S.C. § 362(e)(1) is implicated, the court is inclined to treat this hearing as a preliminary hearing.

As a further procedural matter, the Opposition filed by the debtor does not comply with LBR 9014-1(e)(3), which requires that proof of service of all pleadings be filed with the court not more than three days after the pleading is filed with the court. Here, there is no certificate of service filed with the court showing when and on whom the Opposition was served. In any event, to the extent that the court would consider the substance of the Opposition, it appears that the Opposition is moot because the automatic stay terminated as to the debtor or property of the debtor as of May 17, 2024 pursuant to 11 U.S.C. § 362(c)(3)(A).

Under 11 U.S.C. § 362(c)(3)(A), if an individual debtor filing a chapter 7, 11 or 13 bankruptcy case had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case unless a motion to extend the automatic stay is filed and granted within that 30-day period. Here, the debtor filed a pro se chapter 13 bankruptcy case on November 15, 2023 that was dismissed on November 27, 2023 for the debtor's failure to timely file documents. Case No. 23-12551, Doc. #1, 13. The current case was filed on April 17, 2024, and no motion to extend the automatic stay was filed. This court follows In re Thu Thi Dao, 616 B.R. 103, 104 (Bankr. E.D. Cal. 2020) (Klein, J.), and holds that the plain language of section 362(c)(3)(A) terminates the automatic stay with respect to the debtor and property of the debtor but does not terminate the automatic stay with respect to the estate or property of the estate.

SBE, LP ("Movant") moves the court for an order determining that there is no automatic stay in place with respect to eviction proceedings between Movant and Yahaira Florentino Taveras ("Debtor") concerning residential real property located at 21323 Conklin Court, California City, CA 93505 (the "Property"). Doc. #16. Alternatively, Movant seeks relief from the automatic stay under § 362(d)(1) and (d)(2). Doc. #16.

Movant owns the Property. Doc. #16. Movant acquired the Property at a pre-petition foreclosure auction that was perfected on December 4, 2023 through a Trustee's Deed Upon Sale recorded by First American Title. Ex. A, Doc. #20. Pre-petition, Movant commenced an unlawful detainer action against Debtor in Kern County Superior Court as case number BCL-23-017944. Ex. B, Doc. #20. On March 12, 2024, the Superior Court entered an unlawful detainer judgment in Movant's favor and a writ of possession for the Property was issued. Ex. C, Doc. #20. Copies of the unlawful detainer judgment and writ of possession were sent to the Kern County Sheriff where a lockout procedure for the eviction was scheduled for April 18, 2024. Doc. #16. Debtor filed her voluntary petition under chapter 13 of the Bankruptcy Code on April 17, 2024. Doc. #1. On May 15, 2024, Debtor voluntarily converted her chapter 13 case to chapter 7, after the motion was filed and served on April 30, 2024. Doc. #33.

Movant asserts that pursuant to Eden Place, LLC v. Perl, 811 F.3d 1120 (9th Cir. 2016), Debtor has no remaining interest in the Property, legal or equitable, when the bankruptcy case was filed because, the pre-petition unlawful detainer judgment and writ of possession bestowed legal title and all rights of possession upon Movant pursuant to California Code of Civil Procedure § 415.46. Perl, 811 F.3d at 1130. Thus, at the time Debtor filed her bankruptcy

petition, Debtor had been completely divested of all legal and equitable possessory rights that would otherwise be protected by the automatic stay. Id. Based on Perl, the court finds that Debtor had no remaining interest in the Property when Debtor filed this bankruptcy case on April 17, 2024.

Even if the stay were in place, the court finds grounds to grant Movant relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Section 362(d)(1) of the Bankruptcy Code allows the court to grant relief from the stay for cause. "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). Here, there is cause to lift the stay because Movant obtained an unlawful detainer judgment and writ of possession against Debtor pre-petition and Debtor remains in possession of the Property.

Section 362(d)(2) of the Bankruptcy Code allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization. Here, Debtor does not have any equity in the Property because Debtor has no legal or equitable interest in the Property based on the unlawful detainer judgment and writ of possession. Additionally, the Property is not necessary to an effective reorganization because Debtor is in chapter 7.

In conclusion, the court finds that there is no automatic stay currently in effect with respect to Movant against Debtor or property of Debtor pursuant to 11 U.S.C. § 362(c)(3)(A). With respect to the automatic stay against the estate or property of the estate, the court finds that Debtor had no remaining interest in the Property, legal or equitable, when the bankruptcy case was filed and so there was no property of the estate to which the automatic stay could attach. To the extent that the automatic stay is in effect as to the estate or property of the estate, the automatic stay will be terminated pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit Movant to proceed under applicable non-bankruptcy law to enforce Movant's remedies to gain possession of the Property upon a showing of proper service of the motion on the chapter 7 trustee and the affirmative consent by the chapter 7 trustee of the shortened notice of this motion.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived to permit Movant to take possession of the Property because there is no automatic stay as to Debtor or property of Debtor and, under controlling Ninth Circuit authority, Debtor had no remaining interest in the Property, legal or equitable, when Debtor's bankruptcy case was filed.

15. [24-10076](#)-A-13 **IN RE: STACIA SAMUELS**
[RSW-2](#)

MOTION TO CONFIRM PLAN
4-18-2024 [\[24\]](#)

STACIA SAMUELS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

This motion is 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.

16. [21-10384](#)-A-13 **IN RE: ELLIOTT/TIFFANY SHIPES**
[RSW-4](#)

MOTION TO SELL
5-9-2024 [\[67\]](#)

TIFFANY SHIPES/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Granted if the debtors adequately supplement the record at the hearing.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local

Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. While not required, the secured creditor holding a deed of trust on the property to be sold filed a conditional non-opposition. Doc. #71. Unless further opposition is presented at the hearing, the court intends to enter the defaults of the non-responding parties and grant the motion subject to higher and better offers as well as the conditions set forth in the secured creditor's conditional non-opposition. If further opposition is presented at the hearing, the court will consider that 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.

Elliott Royce Shipes and Tiffany Leanne Shipes (together, "Debtors") petition the court for an order authorizing Debtors to sell real property located at 9110 Staten Island Drive, Bakersfield, California (the "Property") for \$475,000.00 to Jorge Andres Aguilera Durazo and Elizabeth Ledezma. Doc. #67. The sale of the Property is subject to higher and better offers at the hearing. Id. Debtors filed a voluntary chapter 13 petition on February 13, 2021. Doc. #1. Debtors' first modified chapter 13 plan was confirmed on May 18, 2022. Am. Plan, Doc. #52; Order, Doc. #57.

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

This motion was properly served and noticed. Debtors have a fee simple ownership interest in the Property. Schedule A/B, Doc. #1. Debtors have claimed an exemption of the Property in the amount of \$21,046.00 under California Code of Civil Procedure § 703.140. Schedule C, Doc #1. The Property is encumbered by liens and/or security interests totaling \$323,795.60. Schedule D, Doc. #1. Debtors will pay the closing costs and realtors' commissions. Decl. of Tiffany Shipes, Doc. #69. While not required, MidFirst Bank ("Creditor") filed a conditional non-opposition. Doc. #71. Creditor does not oppose Debtors' motion so long as Creditor's lien on the Property is paid off in full through the sale. Id. The court finds that the request of Creditor is reasonable and should be incorporated into the order approving this motion. The court also finds that the sale of the Property is in the best interests of the estate.

Accordingly, subject to Debtors consenting to the conditions set forth in Creditor's conditional non-opposition, and subject to overbid offers made at the hearing, the court is inclined to grant this motion.

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-15-2024 [\[21\]](#)

TRANSPORT FUNDING, L.L.C./MV
JERRY LOWE/ATTY. FOR DBT.
RAFFI KHATCHADOURIAN/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.

This motion was filed and served on at least 14 days' notice prior to the hearing date 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 in part and deny the motion as moot in part. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The movant, Transport Funding, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to (1) a 2017 Kenworth T680 Raised Roof Sleeper tractor truck, VIN: 1XKYDP9X9HJ138968 (the "Kenworth") and (2) two 2017 Freightliner Cascadia Raised Roof Sleeper tractor trucks, VIN: 3AKJGLDR2HSGV7953 and VIN: 3AKJGLDR7HSHF0852 (collectively, the "Freightliners"). Doc. #21. The debtors' solely owned corporation ("Corporation") purchased both the Kenworth and the Freightliners. Decl. of Craig Newton, Doc. #25. Debtor Victor Javier Torres Figueroa executed a continuing guarantee of Corporation's obligations with respect to the Kenworth and the Freightliners. Newton Decl., Doc. #25; Exs. 2 & 8, Doc. #26.

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 Corporation is delinquent by at least \$20,231.96 with respect to the Kenworth and delinquent by at least \$54,572.71 with respect to the Freightliners. Newton Decl., Doc. #25; Exs. 1 & 7, Doc. #26. The debtors surrendered the Kenworth and the Freightliners to Movant post-petition. Newton Decl., Doc. #25.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Kenworth and the Freightliners have been surrendered to Movant and are depreciating assets.

11:00 AM

1. [21-11450](#)-A-7 **IN RE: ANTHONY FLORES**
[21-1036](#)

CONTINUE PRE-TRIAL CONFERENCE RE: COMPLAINT
8-24-2021 [[1](#)]

SAWUSCH ET AL V. FLORES
JESSICA WELLINGTON/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 21, 2024 at 11:00 a.m.

ORDER: The court will issue an order.

On May 16, 2024, counsel for the plaintiffs filed a pre-trial statement and request to continue the pre-trial conference ("Statement") updating the court on the status of proceedings in a criminal matter against the defendant related to this adversary proceeding. Doc. #54. Based on the Statement, the pre-trial conference in this adversary proceeding is continued to November 21, 2024 at 11:00 a.m. Should this adversary proceeding not be dismissed as of November 14, 2024, the plaintiffs shall file and serve a status report no later than November 14, 2024.

2. [20-13451](#)-A-7 **IN RE: AMANDEEP SINGH**
[21-1004](#) [HRH-4](#)

MOTION TO STRIKE AND/OR MOTION FOR ENTRY OF DEFAULT JUDGMENT
5-9-2024 [[117](#)]

BMO HARRIS BANK, N.A. V. SINGH
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice of this motion and related pleadings were mailed on May 9, 2024, with a hearing date set for May 30, 2024, which is less than 28 days from the date of mailing. Doc. #123. Pursuant to Local Rule of Practice 9014-1(f)(2)(A), motions in an adversary proceeding may not be set for hearing on less than 28 days' notice.

3. [16-14564](#)-A-13 **IN RE: FRANK/REBECCA MARTINEZ**
[23-1055](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-20-2023 [[1](#)]

MARTINEZ ET AL V. SOLARCITY
FINANCE COMPANY, LLC ET AL
GABRIEL WADDELL/ATTY. FOR PL.

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

DISPOSITION: Dropped from calendar

NO ORDER REQUIRED.

A judgment in favor of the plaintiffs was entered on April 30, 2024. Doc. #36. Accordingly, this status conference is dropped from calendar. This adversary may be administratively closed when appropriate.