



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, June 6, 2024
Department A – 510 19th street
Bakersfield, California

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

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) via **ZoomGov Video**, (2) via **ZoomGov Telephone**, and (3) 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.

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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. [24-10017](#)-A-13 **IN RE: DANIEL/MADALENA HENSLEY**
[LGT-1](#)

MOTION TO DISMISS CASE
4-26-2024 [[26](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

2. [24-10719](#)-A-13 **IN RE: MELINDA JAMES**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
5-10-2024 [[13](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Continued to July 11, 2024 at 9:00 a.m.

ORDER: The court will issue an order.

Melinda Lea James ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on March 22, 2024. Doc. #1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because the Plan: (1) provides for the payment of attorneys' fees in excess of the fixed compensation allowed in LBR 2016-1(c); and (2) is not feasible. Doc. #13.

This objection will be continued to July 11, 2024 at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than June 27, 2024. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Trustee shall file and serve a reply, if any, by July 3, 2024.

If Debtor elects 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 July 3, 2024. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be sustained on the grounds stated in Trustee's objection without a further hearing.

3. [18-12923](#)-A-13 **IN RE: JESUS/ROCHELLE PORTILLO**
[PK-11](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
5-16-2024 [\[181\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

There is no certificate of service filed with the court showing when the motion and notice of motion were served. Therefore, the motion filed by the debtors does not comply with Local Rule of Practice ("LBR") 9014-1(e)(3), which requires that proof of service of all pleadings be filed with the court not more than three (3) days after the pleading is filed with the court. The motion also does not comply with Federal Rule of Bankruptcy Procedure 2002, which requires that a motion for compensation must be served on parties in interest at least twenty-one (21) days prior to the hearing.

4. [23-12130](#)-A-13 **IN RE: PAMELA MULLEN**
[RSW-3](#)

MOTION TO CONFIRM PLAN
5-3-2024 [\[53\]](#)

PAMELA MULLEN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The motion to confirm was withdrawn on May 30, 2024. Doc. #66.

5. [24-10938](#)-A-13 **IN RE: RANDEL/CARRIE ROQUE**
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TD BANK, N.A.
5-1-2024 [\[12\]](#)

TD BANK, N.A./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

NO RULING.

6. [24-10539](#)-A-13 **IN RE: ANTONIO PERALTA**
[JCW-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MIDFIRST BANK
4-8-2024 [\[16\]](#)

MIDFIRST BANK/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

7. [24-10539](#)-A-13 **IN RE: ANTONIO PERALTA**
[LGT-1](#)

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

ROBERT WILLIAMS/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 29, 2024. Doc. #37.

8. [24-10645](#)-A-13 **IN RE: LINDA ZEPEDA FRIAS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-20-2024 [\[25\]](#)
\$78.00 FILING FEE PAID 6/3/24

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid.

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.

OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA INC.
5-8-2024 [\[16\]](#)

SANTANDER CONSUMER USA INC./MV
SHERYL ITH/ATTY. FOR MV.

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.

Lynette Michelle Lister ("Debtor") filed her chapter 13 plan ("Plan") on March 25, 2024. Plan, Doc. #11. Santander Consumer USA Inc. ("Creditor"), objects to confirmation of the Plan because the Plan: (1) does not provide treatment for Creditor's claim; (2) is incomplete; and (3) is not feasible. Doc. #16.

Federal Rule of Bankruptcy Procedure 3001(f) provides 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." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on April 9, 2024. Claim 6-1.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Plan, Doc. #11. The Plan lists Creditor's claim in Class 1 but fails to account for the arrearage asserted in Creditor's claim. Claim 6-1; Plan, Doc. #11. The Plan does not state an amount of arrears owed to Creditor; however, the proof of claim states the pre-petition arrears total to cure any default is \$3,454.95. Claim 6-1; Doc. #11, 16. Creditor asserts that the Plan is incomplete because section 2 of the Plan does not list a plan payment amount or the duration of the plan as well as various claim information is missing. Doc. #16. Further, Creditor asserts that the Plan is not feasible because Schedule J is incomplete, and Debtor appears to have a negative net income. Schedule I & J, Doc. #1; Doc. #16. The court finds that the incomplete plan, Debtor's lack of income and Debtor's failure to demonstrate an ability to pay the arrearages owed to Creditor or fund the Plan render the Plan unfeasible.

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

10. [24-10257](#)-A-13 **IN RE: MAREBEL RANGEL**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
3-25-2024 [\[17\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

11. [24-10257](#)-A-13 **IN RE: MAREBEL RANGEL**
[LGT-2](#)

MOTION TO DISMISS CASE
4-26-2024 [\[20\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part; the case will be converted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an 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). The debtor filed timely opposition on May 16, 2024. Doc. #33. 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). Therefore, the defaults of the non-responding parties in interest are entered. The matter will proceed as scheduled.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c) for the debtor's failure to: (1) appear at the continued 341 meeting of creditors held on April 6, 2024; (2) provide Trustee with documents related to the debtor's business; (3) provide Trustee with a copy of the debtor's most recently filed tax return and evidence of payments to Class 1 claims; and (4) commence making plan payments. Doc. #20.

The debtor opposes the motion to dismiss and asserts, without providing any supporting evidence, that the debtor is out of the country for medical reasons but expects to be back soon. Doc. #33. Pursuant to the debtor's response to Trustee's objection to confirmation, also filed without supporting evidence, the debtor remains hospitalized in Mexico and is unable to cooperate with Trustee. Doc. #31. The debtor expects to be out of the hospital in time to allow the debtor to provide Trustee what is needed before the continued hearing. Id. The debtor has provided her most recently filed tax return to Trustee plus a declaration that the debtor does not believe she is required to file a tax return for 2022. Id. It is unclear whether the debtor is required to file tax returns for 2023. Id.

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 for failing to cooperate with Trustee and appear for the continued 341 meeting of creditors. There also is "cause" for dismissal under 11 U.S.C. § 1307(c)(4) for failing to commence making timely payments as required by 11 U.S.C. § 1326.

A review of the debtor's Schedules A/B, C and D shows that there is equity in co-owned property, business assets and other assets such that there appears to be significant non-exempt equity in the debtor's assets to be realized for the benefit of the estate if the debtor's bankruptcy case is converted to chapter 7 instead of being dismissed. Thus, the court finds that conversion, rather than dismissal, is in the best interests of creditors and the estate.

Accordingly, the debtor's opposition will be overruled, the motion will be GRANTED IN PART, and the case will be converted.

12. [20-10861](#)-A-13 **IN RE: DUSTIN ADAMS**
[RSW-2](#)

MOTION TO MODIFY PLAN
4-9-2024 [\[52\]](#)

DUSTIN ADAMS/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)(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 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.

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, WAIVE SECTION 1328
CERTIFICATE REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY,
AS TO DEBTOR
5-9-2024 [\[39\]](#)

JON GRAVES/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if the Moving Party adequately supplements 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 set for hearing on at least 28 days' notice prior to the
hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(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). Therefore,
the defaults of the above-mentioned parties in interest are entered.
Constitutional due process requires a moving party make a *prima facie* showing
that they are entitled to the relief sought, which the movant has not done
here.

Jean Kim ("Movant"), the surviving sibling and successor of Jon Douglas Graves
("Debtor"), the debtor in this chapter 13 case, requests the court name Movant
as the successor to the deceased Debtor, permit the continued administration of
this chapter 13 case, and waive the § 1328 certification requirements.
Doc. #39.

Upon the death of a debtor in chapter 13, Federal Rule of Bankruptcy Procedure
("Rule") 1016 provides that the case may be dismissed or may proceed and be
concluded in the same manner, so far as possible, as though the death had not
occurred upon a showing that further administration is possible and in the best
interest of the parties. Fed. R. Bankr. P. 1016. Debtor died on November 14,
2023. Decl. of Jean Kim, Doc. #41. Movant declares that she is the best person
to fulfill any requirements necessary to complete this chapter 13 case. Kim
Decl., Doc. #41. However, Movant's declaration does not establish the showing
required under Rule 1016, namely, that further administration of Debtor's
chapter 13 case is possible and is in the best interests of the parties. Before
the court will grant the motion, the court requires Movant to supplement the
record at the hearing with respect to the showing required by Rule 1016.

With respect to a waiver of Debtor's certification requirements for entry of
discharge under 11 U.S.C. § 1328, Debtor failed to meet the post-petition
financial education requirements before Debtor died. However, Debtor's death
demonstrates an inability to provide certifications required, and the
certification requirements will be waived. Ex. 1, Doc. #42. No objections have
been filed in response to this motion.

Accordingly, subject to Movant adequately supplementing the record at the
hearing, the court is inclined to grant this motion in full.

MOTION TO VALUE COLLATERAL OF BRIDGECREST ACCEPTANCE CORPORATION
5-2-2024 [\[54\]](#)

MARIO HUNTER/MV
ERIKA LUNA/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 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.

Mario Ullysses Hunter ("Debtor"), the debtor in this chapter 13 case, moves the court for an order valuing Debtor's 2018 Hyundai Elantra SEL Sedan 4D (the "Vehicle"), which is the collateral Bridgecrest Acceptance Corporation ("Creditor"). Doc. #54; Claim 2-1.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Pursuant to the attachments to Creditor's proof of claim filed on November 19, 2023, the Vehicle was purchased on June 26, 2020, which is more than 910 days before this bankruptcy case was filed on November 1, 2023. Doc. #1; Attachment 1 to Claim 2-1. Debtor asserts a replacement value of the Vehicle of \$3,907.00 and asks the court for an order valuing the Vehicle at \$3,907.00.

Decl. of Mario Hunter, Doc. #57. Debtor is competent to testify as to the value of the Vehicle. Creditor's proof of claim also asserts a secured claim of \$3,907.00. Claim 2-1. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$3,907.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

15. [23-12466](#)-A-13 **IN RE: MARIO HUNTER**
[LGT-1](#)

MOTION TO DISMISS CASE
4-29-2024 [\[48\]](#)

ERIKA LUNA/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to July 11, 2024 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 after the hearing.

On April 29, 2024, the chapter 13 trustee noticed a hearing on a motion to dismiss the debtor's bankruptcy case for the debtor's failure to confirm a chapter 13 plan. Doc. ##48-51. The debtor filed a late opposition as well as a motion to confirm a second amended chapter 13 plan. Doc. ##61-66, 71. A hearing on the motion to confirm is set for July 11, 2024 at 9:00 a.m. Doc. #63. Because confirmation of a plan will resolve this motion to dismiss, the court is inclined to continue the hearing on this motion to July 11, 2024 at 9:00 a.m., to be heard in connection with the debtor's motion to confirm plan.

16. [23-12474](#)-A-13 **IN RE: KRISTIN WINSOR**
[LGT-1](#)

CONTINUED MOTION TO DISMISS CASE
2-26-2024 [\[46\]](#)

LILIAN TSANG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
DISMISSED 4/26/24

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on April 26, 2024. Doc. #59. Therefore, this motion will be DENIED AS MOOT.

17. [24-10574](#)-A-13 **IN RE: ANNA NEGRETE**
[LGT-1](#)

MOTION TO DISMISS CASE
4-29-2024 [\[15\]](#)

RESPONSIVE PLEADING

NO RULING.

18. [24-10574](#)-A-13 **IN RE: ANNA NEGRETE**
[LGT-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
5-20-2024 [\[27\]](#)

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed a modified plan on May 21, 2024. Doc. #30.

19. [23-10684](#)-A-13 **IN RE: CHERYL MELIZA LOPEZ**
[LGT-1](#)

CONTINUED MOTION TO DISMISS CASE
2-5-2024 [\[50\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

20. [23-10684](#)-A-13 **IN RE: CHERYL MELIZA LOPEZ**
[RSW-2](#)

CONTINUED MOTION TO MODIFY PLAN
4-2-2024 [\[63\]](#)

CHERYL MELIZA LOPEZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

MOTION TO DISMISS CASE
4-15-2024 [\[33\]](#)

LILIAN TSANG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on May 22, 2024. Doc. #42. The failure of the U.S. Trustee or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered. This matter will proceed as scheduled.

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. #33. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) provide Trustee with requested documents; (2) provide Trustee with complete documents; (3) file complete and accurate schedules that include information regarding the debtor's non-filing spouse; and (4) commence making plan payments. Doc. #33.

On May 22, 2024, the debtor responded to Trustee's motion. Doc. #42. The debtor did not address the debtor's failure to commence making plan payments. Id. With respect to failing to provide documents to Trustee, the response asserts, without supporting evidence, that debtor has sporadically responded to her counsel's request for documents and those documents have been sent to Trustee. Id. Further, the response asserts that the debtor's counsel has been contacted by a title company to seek approval to sell the real property. Id.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor has failed to provide Trustee with requested documents and has failed to file complete and accurate schedules. There also is "cause" for dismissal under 11 U.S.C. § 1307(c)(4) for failing to commence making timely payments as required by 11 U.S.C. § 1326.

A review of the debtor's Schedules A/B, C and D shows that there is no equity in the debtor's assets after considering secured claims and claimed exemptions.

Doc. #16. Thus, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

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

1. [24-10200](#)-A-7 **IN RE: DMW INDUSTRIES, INC.**
[JMV-1](#)

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL COMPANY AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT
OF AUCTIONEER FEES AND EXPENSES
5-9-2024 [\[12\]](#)

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

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of DMW Industries, Inc. ("Debtor"), moves the court for an order authorizing: (1) the employment of Gould Auctions & Appraisals ("Auctioneer"); (2) the sale of numerous assets, namely, (i) one 2000 Freightliner; (ii) one 2000 Chevy 6500; (iii) one 2011 Chevy 3500; (iv) four 2013 Chevy 3500; (v) one 2014 Chevy 3500; (vi) one 2014 Chevy 1500; (vii) one 2008 Ford 650; (viii) one 2014 Chevy 2500; (ix) one 2018 Chevy 2500; (x) two 2018 GMC 3500; (xi) one 2020 Ford 150; (xii) one Champ Forklift; (xiii) one 2011 Carson Trailer; (xiv) one 2013 Carson Trailer; (xv) one 2014 Carson Trailer; (xvi) one 1978 Vulcan; (xvii) one 2001 Zieman Flat Bed Trailer; and (xviii) miscellaneous tools and equipment; (collectively, the "Property") at public auction on July 27, 2024 at 9:00 a.m. at Auctioneer's location at 6100 Price Way, Bakersfield, California 93308; and (3) the estate to pay Auctioneer's commission and expenses. Tr.'s Mot., Doc. #12.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners,

L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of Jeffrey M. Vetter, Doc. #14. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Id. The proposed sale is made in good faith.

Section 327(a) of the Bankruptcy Code provides, in relevant part, "the trustee, with the court's approval, may employ . . . auctioneers . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). The trustee may, with the court's approval, employ an auctioneer on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jerry Gould, Doc. #16. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Vetter Decl., Doc. #14. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price, 10% of the buyer's premium of the gross sale price, \$1,000.00 as an expense reimbursement for pick up and storage of the Property, and extraordinary expenses (such as repair or detail work deemed by Trustee to be necessary and beneficial to the estate) in an amount not to exceed \$3,750.00. Id. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Tr.'s Mot., Doc. #12; Vetter Decl., Doc. #14.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Property on the terms set forth in the motion. Trustee is authorized to employ and pay Auctioneer for services as set forth in the motion. Trustee shall submit a form of order that specifically states that employment of Auctioneer has been approved pursuant to 11 U.S.C. § 328.

2. [23-11048](#)-A-7 **IN RE: TIMOTHY CRANE**
[ALG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-7-2024 [\[68\]](#)

PETER D. BERGER TRUSTEE OF THE PETER D. BERGER TRUST DATED
ROBERT WILLIAMS/ATTY. FOR DBT.
ARNOLD GRAFF/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

As a procedural matter, the motion and memorandum of points and authorities do not comply with Local Rule of Practice 9014-1(d)(4), which permits the motion and memorandum of points and authorities to be combined as a single document only if the document is six pages or less. Here, the combined motion and memorandum of points and authorities is seven pages.

As a further procedural matter, the certificate of service filed in connection with this motion for relief from the automatic stay shows that service was made pursuant to Federal Rule of Civil Procedure 5 and Federal Rules of Bankruptcy Procedure ("Rule") 7005, 9036 Service. Doc. #74. However, Rules 4001(a)(1) and 9014(b) require service of a motion for relief from the automatic stay to be made pursuant to Rule 7004. Here, the certificate of service shows service was completed by mail. However, the appropriate boxes in section 6A would have needed to be checked and the appropriate attachment 6A1 attached to the certificate of service form.

The court encourages counsel for the moving party to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules>

3. [24-11192](#)-A-7 **IN RE: MIGUEL ANGEL/TERESA PACHECO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-14-2024 [\[14\]](#)

VINCENT GORSKI/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 5/17/24

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees have been paid in full.

4. [24-11193](#)-A-7 **IN RE: MARIA LOPEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-14-2024 [\[13\]](#)

VINCENT GORSKI/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 5/17/24

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees have been paid in full.

11:00 AM

1. [23-12905](#)-A-7 **IN RE: REZA IMANI**
[24-1009](#) [CAE-2](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE DISCLOSURE STATEMENT
4-26-2024 [[7](#)]

CREDITORS ADJUSTMENT BUREAU, INC. V. IMANI

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the missing corporate disclosure statement was filed on April 26, 2024. Doc. #9. Therefore, this order to show cause will be VACATED.

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

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
2-5-2021 [[1](#)]

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

NO RULING.