



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

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

Hearing Date: Wednesday, June 7, 2023

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

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) via **ZOOMGOV VIDEO**, (2) via **ZOOMGOV TELEPHONE**, and (3) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

Post-Publication Changes: The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:00 AM

1. [19-11809](#)-B-13 **IN RE: CHRISTINE WOOD**
[PK-3](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
5-3-2023 [[46](#)]

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 motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("Rule").

Here, the certificates of service indicate only the debtor, chapter 13 trustee, the Office of the U.S. Trustee, and Robert Williams were served notice of this motion. Docs. #49, #51. Rule 2002(a)(6) requires 21 days' notice by mail to all creditors of a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000. Even the limited noticing Local Rule, LBR 2002-3 requires creditors with filed claims to be served. Rule 2002(h)(1). Even if this were a limited noticing motion, the applicant did not check the limited noticing box in Section 3.

2. [22-11720](#)-B-13 **IN RE: ERIN STEVENSON**
[MHM-3](#)

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

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to July 6, 2023 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 motion was originally set for hearing on April 5, 2023, continued to May 3, 2023, and continued again to June 7, 2023. Docs. #46, #60.

Chapter 13 trustee Michael H. Meyer ("Trustee") asked the court to dismiss this case for cause for (1) unreasonable delay by the debtor that is prejudicial to creditors [11 U.S.C. § 1307(c)(1)], (2) failure to file tax returns for the years 2016-18 and 2020 [§ 1307(e)], (3) failure to confirm a chapter 13 plan [§ 1307(c)], and (4) failure to file complete and accurate *Schedules E/F* [§ 521; Fed. R. Bankr. P. 1007]. Doc #41.

Erin David Stevenson ("Debtor") timely filed a response on March 22, 2023. Doc. #45. Debtor intended to file a modified plan to resolve the issues raised in Trustee's motion and claimed the required taxes and information have been sent to the Internal Revenue Service ("IRS"). *Id.* Debtor filed a modified plan on March 31, 2023, which is set for hearing in matter #4 below. MJD-1. Debtor also filed an *Amended Schedule E/F* on April 4, 2023. Doc. #55.

The court continued this hearing to allow for either Debtor to submit evidence in support of the contention that the taxes have been filed with the IRS, or for the IRS to amend its proof of claim. Docs. #56-57. On April 11, 2023, the IRS filed Amended Proof of Claim No. 1-2, reducing the amount of its claim to \$0.00.

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), (c)(1), and (e) for unreasonable delay by the debtor that is prejudicial to creditors, failure to file tax returns, and failure to confirm a plan.

Though the court intends to continue plan confirmation, this matter will be called as scheduled. It appears Debtor has resolved most of the issues raised by Trustee in this motion except for confirmation of a chapter 13 plan. The court is inclined to CONTINUE the hearing on this motion to the July 6, 2023 at 9:00 a.m. to be heard in connection with the plan confirmation hearing.

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

MOTION TO DISMISS CASE
5-5-2023 [[62](#)]

MATTHEW DECAMINADA/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

The chapter 13 trustee withdrew this motion on June 5, 2023. Doc. #71. Accordingly, this motion will be dropped and taken off calendar pursuant to the trustee's withdrawal.

4. [22-11720](#)-B-13 **IN RE: ERIN STEVENSON**
[MJD-1](#)

MOTION TO CONFIRM PLAN
3-31-2023 [[47](#)]

ERIN STEVENSON/MV
MATTHEW DECAMINADA/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 6, 2023 at 9:00 a.m.

ORDER: The court will issue an order.

Erin David Stevenson ("Debtor") moves for an order confirming the [First Modified] *Chapter 13 Plan* dated March 31, 2023. Doc. #47.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely filed written opposition. Doc. #67. Trustee contends:

- (1) The plan fails to provide for the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is at least the amount that would be paid on such claim if the estate was liquidated under chapter 7 [11 U.S.C. § 1325(a)(4)];
- (2) Debtor will not be able to make all payments under the plan and comply with the plan [§ 1325(a)(6)]; and
- (3) The plan provides for payments to creditors for a period longer than 5 years [§ 1322(d)].

Id. Debtor did not reply; however, Debtor's opposition to Trustee's motion to dismiss in matter #3 above indicates that Debtor intends to be current by the time of the hearing on this motion. Doc. #67; MHM-4.

This motion will be CONTINUED to July 6, 2023 at 9:00 a.m. Unless the case is voluntarily converted to chapter 7, dismissed, or the Trustee's opposition to confirmation is withdrawn, the Debtor shall file and serve a written response to the opposition not later than June 22, 2023. The response shall specifically address each issue raised in Trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee shall file and serve a reply, if any, by June 29, 2023.

If Debtor elects to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than June 29, 2023. If the Debtor does not timely file a modified plan or a written response, this motion will be denied on the ground stated in the objection without further hearing.

5. [21-12561](#)-B-13 **IN RE: AMANDA GROAH**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
3-8-2023 [[28](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This motion was originally heard on April 12, 2023, continued to May 3, 2023, and continued again to June 7, 2023. Docs. #34, #49.

Chapter 13 trustee Michael H. Meyer ("Trustee") asked the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay by debtor that is prejudicial to creditors and material default by the debtor with respect to a term of a confirmed plan. Doc #28.

Amanda Roselle Groah ("Debtor") timely responded on March 29, 2023, indicating that debtor will pay \$1,700.00 on March 31, 2023 and \$800.00 during the week of April 2, 2023. Doc. #32.

This motion was continued to May 3, 2023 based on representations from the Trustee at the hearing and Debtor's counsel prior to the hearing that Debtor's counsel would be unavailable. Docs. #34, #36. On April 26, Debtor filed a supplemental response and a motion to modify plan, which is set for hearing in matter #6 below. Docs. ##39-45. The court further continued the motion to dismiss to be heard in connection with the plan modification hearing. Docs. ##49-50.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay by the debtor that is prejudicial to creditors and material default with respect to a term of a confirmed plan.

The court intends to grant Debtor's motion to modify plan in matter #6 below. RSW-1. This matter will be called as scheduled to verify that all issues raised in the motion are resolved through the modified plan. If so, the court intends to DENY this motion WITHOUT PREJUDICE.

6. [21-12561](#)-B-13 **IN RE: AMANDA GROAH**
[RSW-1](#)

MOTION TO MODIFY PLAN
4-26-2023 [[39](#)]

AMANDA GROAH/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.

Amanda Roselle Groah ("Debtor") moves for an order confirming the *First Modified Chapter 13 Plan* dated April 27, 2023. Doc. #39.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, chapter 13 trustee, U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual

hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The 60-month, 0%-distribution plan proposes that Debtor shall pay \$35,258.47 in plan payments through April 2023, and beginning May 2023, the monthly plan payment will be \$2,224.00. Doc. #42. Debtor's *Amended Schedules I & J* filed April 27, 2023 indicate receipt of \$2,224.07 in monthly net income, which is sufficient to fund the proposed plan payment. Doc. #47.

In contrast, the operative *Chapter 13 Plan* dated November 2, 2021, confirmed January 4, 2022, provides for 60 monthly payments of \$2,316.00 with a 0% distributed to allowed, non-priority unsecured claims. Docs. #3, #13.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. The confirmation order shall include the docket control number of the motion and shall reference the plan by the date it was filed.

7. [22-11962](#)-B-13 **IN RE: JUAN FIGUEROA**
[RSW-1](#)

MOTION TO AVOID LIEN OF PACCAR FINANCIAL CORPORATION
5-3-2023 [[34](#)]

JUAN FIGUEROA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Juan Gabriel Figueroa ("Debtor") moves to avoid a lien in favor of Paccar Financial Corporation ("Creditor") encumbering residential real property located 8112 Prata Avenue, Bakersfield, CA 93307 ("Property") in the amount of \$116,502.16.¹ Doc. #34.

On May 26, 2023, Debtor and Creditor jointly filed an *ex parte* motion to approve stipulation and a stipulation to avoid Creditor's lien with respect to Property. Docs. ##40-41.

The court approved the stipulation on May 30, 2023. Doc. #43. Accordingly, this motion will be dropped and taken off calendar because the lien is avoided pursuant to the parties' stipulation.

¹ Debtor complied with Fed. R. Bankr. P. 7004(b)(3) and (i) by serving Creditor's registered agent for service of process via regular U.S. mail on May 3, 2023. Doc. #38.

8. [23-10274](#)-B-13 **IN RE: ATHENA ALANIZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-24-2023 [[41](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
INSTALLMENTS PAID IN FULL ON 5/3/23

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 installment fees now due have been paid. Accordingly, the order to show cause will be VACATED.

9. [23-10274](#)-B-13 **IN RE: ATHENA ALANIZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-10-2023 [[48](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

Athena Veronica Alaniz ("Debtor") made an installment payment on March 21, 2023. On March 27, 2023, the payment was rejected for insufficient funds.

On May 10, 2023, the Clerk of the court issued an *Order to Show Cause re Dismissal of Contested Matter or Imposition of Sanctions* directing Debtor to appear at the hearing and show cause why the motion should not be stricken, the case dismissed, sanctions imposed on the party

filer and/or their counsel, or other relief ordered for failure to comply with the provisions the Bankruptcy Code. Doc. #48.

This matter will proceed as scheduled. If the returned check fee of \$53.00 is not paid prior to the hearing, the case may be dismissed and sanctions imposed on the Debtor and/or Debtor's counsel on the grounds stated in the OSC.

10. [23-10274](#)-B-13 **IN RE: ATHENA ALANIZ**
[MHM-1](#)

MOTION TO DISMISS CASE
4-17-2023 [[29](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause under 11 U.S.C. § 1307(c) (1) and (c) (4) for unreasonable delay by the debtor that is prejudicial to creditors and failure to make all payments due under the plan. Doc. #29.

Athena Veronica Alaniz ("Debtor") filed opposition on May 26, 2023, but it was neither timely filed by May 24, 2023 nor supported by admissible evidence. Doc. #53.

This matter will be called and proceed as scheduled to inquire whether Debtor is current on payments under the plan. If so, this motion will be DENIED WITHOUT PREJUDICE. If not, this motion may be GRANTED, and the case dismissed.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f) (1). The failure of the creditors, the Debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f) (1) (B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

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

Here, Debtor is delinquent in the amount of \$2,831.00. Doc. #31. Before this hearing, another payment in that same amount will also come due, resulting in a total delinquency of \$5,662.00. *Id.*

In response, Debtor claims that the plan payment is now current. Doc. #53.

Trustee has reviewed the schedules and determined that Debtor's significant assets are over encumbered or exempted in their entirety. Thus, no equity exists that could be realized for the benefit of the estate. Therefore, dismissal, rather than conversion, best serves the interests of creditors and the estate.

This matter will be called and proceed as scheduled to inquire whether Debtor is current under the plan. If so, this motion will be DENIED WITHOUT PREJUDICE; otherwise, this motion may be GRANTED, and the case dismissed.

11. [23-10075](#)-B-13 **IN RE: REFUJIO GUILLEN**
[RSW-2](#)

MOTION TO CONFIRM PLAN
4-19-2023 [\[45\]](#)

REFUJIO GUILLEN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Refugio Guillen ("Debtor") moves for an order confirming the *Chapter 13 Plan* dated January 18, 2023. Doc. #45.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected because (1) the plan fails to provide for the value, as of the effective date of the plan, of property to be distributed on account of each allowed unsecured claim in at least the amount that would be

paid if the estate were liquidated under chapter 7, (2) Debtor will not be able to make all payments under the plan and comply with the plan, and (3) the plan provides for payment to creditors for a period longer than five years. Doc. #75.

Betty Holtsnider and Edward Holtsnider (collectively "Creditors") timely objected because (1) the plan does not provide for Creditors' claim, and (2) the plan is not feasible. Doc. #77. However, a secured creditor's claim does not need to be "provided for" by the plan. If a claim is provided for by the plan, § 1325(a)(5) governs its treatment. There is nothing in §§ 1322 or 1325 requiring that a secured creditor's claim be "provided for" in the plan. Section 3.11(b) of the plan states that a secured creditor whose claim is not provided for in the plan may seek stay relief. See Doc. #22.

This motion will be DENIED WITHOUT PREJUDICE.

First, after this motion was filed, the court sustained the objection to confirmation filed by the People of the State of California ("People") and subsequently overruled as moot Trustee's objection solely because the People's objection was already sustained. Docs. ##72-73.

Second, the certificate of service does not comply with Local Rule of Practice ("LBR") 7005-1, which requires service of pleadings and other documents in all proceedings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users to document service using the *Official Certificate of Service Form*, EDC 007-005 ("Official Form").²

Accordingly, this motion will be DENIED WITHOUT PREJUDICE because the People's objection has already been sustained. Debtor's next attempt should address all of the reasons raised in Trustee's, Creditors', and the People's sustained objections and include admissible evidence in support of Debtor's position.

² The Official Form and related information can be found on the court's website. See <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited June 5, 2023).

12. [23-10487](#)-B-13 **IN RE: CHERYLANNE FARLEY**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-13-2023 [\[17\]](#)

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

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

DISPOSITION: Sustained.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Cherylanne Lee Farley's ("Debtor") claimed exemption in \$13,000 cash in a checking account under Cal. Code Civ. Proc. § 704.110. Doc. #17. The cash is allegedly traceable to exempt federal retirement benefits. *Id.*

Debtor timely responded. Doc. #21.

This objection will be SUSTAINED.

This objection was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the sustaining of the objection. *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 except Debtor are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the objecting party has done here.

CCP § 704.110 allows a debtor to exempt public retirement and related benefits and contributions.

The Trustee argues that it is Debtor's burden to trace the cash in the checking account to exempt benefits. Doc. #17, citing *Rodriguez v. City of Colton*, No. EDCV 07-00303-ABC (KKx), 2015 WL 5138713, 2015 U.S. Dist. LEXIS 116556 (C.D. Cal. July 20, 2015), *report and*

recommendation adopted, 2015 WL 5145515, 2015 U.S. Dist. LEXIS 116559 (C.D. Cal. Sept. 1, 2015). The Trustee is correct.

In response, Debtor does not oppose the objection. Her counsel avers that Debtor is overcoming some medical issues but intends to amend her schedule C to change the exemptions. Doc. #21. Debtor requests the objection be sustained without prejudice. *Id.* The court construes that request as Debtor asking to file an amended exemption schedule.

Schedules may be amended by the debtor as a matter of course before the case is closed. Rule 1009(a). Special permission is unnecessary here.

Accordingly, the objection is SUSTAINED.

13. [23-10290](#)-B-13 **IN RE: EMILY MARTIN**
[MHM-1](#)

MOTION TO DISMISS CASE
4-18-2023 [\[20\]](#)

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

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

The chapter 13 trustee withdrew this motion on June 5, 2023. Doc. #43. Accordingly, this motion will be dropped and taken off calendar pursuant to the trustee's withdrawal.

14. [23-10290](#)-B-13 **IN RE: EMILY MARTIN**
[RSW-2](#)

MOTION TO CONFIRM PLAN
5-3-2023 [\[26\]](#)

EMILY MARTIN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 6, 2023 at 9:00 a.m.

ORDER: The court will issue an order.

Emily Marie Martin ("Debtor") moves for an order confirming the *First Modified Chapter 13 Plan* dated May 3, 2023. Doc. #26.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected because (1) the plan fails to provide for the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is at least the amount that would be paid on such claim if the estate was liquidated under chapter 7 [11 U.S.C. § 1325(a)(4)], and (2) Debtor will not be able to make all payments under the plan and comply with the plan [§ 1325(a)(6)]. Doc. #32.

Debtor replied, agreeing to increase the plan payment by \$12.30 beginning in month 3. Doc. #37.

After Debtor's reply, U.S. Bank, N.A. ("Creditor") timely objected because (1) the plan does not provide acceptable treatment for its claim because Debtor does not have a contractual relationship with Debtor, (2) the plan is not feasible because Debtor's income to fund the plan payment comes from renters, but no declarations have been filed by such renters, and (3) the plan fails to cure Creditor's pre-petition arrearage of \$28,233.38. Doc. #40.

This motion will be CONTINUED to July 6, 2023 at 9:00 a.m. Unless the case is voluntarily converted to chapter 7, dismissed, or the Trustee's and Creditor's oppositions to confirmation are withdrawn, the Debtor shall file and serve a written response to the oppositions not later than June 22, 2023. The response shall specifically address each issue raised in Trustee's and Creditor's objections to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee and Creditor shall file and serve a reply, if any, by June 29, 2023.

If Debtor elects to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than June 29, 2023. If the Debtor does not timely file a modified plan or a written response, this motion will be denied on the ground stated in the objections without further hearing.

10:00 AM

1. [13-14741](#)-B-7 **IN RE: JAMES LEON**
[RSB-2](#)

MOTION TO AVOID LIEN OF CITIBANK, NA
4-26-2023 [[73](#)]

JAMES LEON/MV
R. BELL/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.

James Rosario Leon ("Debtor") moves to avoid a lien in favor of Citibank, N.A. ("Creditor") encumbering residential real property located at 3913 Crescent Dr., Bakersfield, CA 93306 ("Property") in the amount of \$20,856.57.³ Doc. #73.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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 amount of \$20,856.57 on March 21, 2013. *Ex. C*, Doc. #75. The judgment was issued on March 29, 2013 and was recorded in Kern County on April 10, 2013. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #76.

Though the judgment was entered more than 10 years ago, it does not appear to have yet expired. Absent tolling, the judgment would have expired on March 21, 2023 - 3,652 days later.⁴ The 10-year renewal period ran for 102 days (with 3,550 days remaining) from March 21, 2013 to July 9, 2013 when Debtor filed a chapter 7 bankruptcy.

On filing bankruptcy, Debtor triggered the automatic stay. 11 U.S.C. § 362(a) precludes creditors from renewing judgments while the automatic stay is in effect, so Creditor was unable to renew the judgment during this time. *Spirtos v. Moreno (In re Spirtos)*, 221 F.3d 1079, 1080 (9th Cir. 2000); *see also, Kertesz v. Ostrovsky*, 115 Cal. App. 4th 369, 377-78 (2004) ("The suspension of a statute of limitations for a certain period is, in effect 'time taken out,' for that period and adds the same period of time to the limitation time provided in the statute.") (internal quotation omitted), citing *Schumacher v. Worcester*, 55 Cal. App. 4th 376, 380 (1997).

Section 108(c) preserves the period of renewal while the automatic stay is in effect and the bankruptcy case is pending:

[I]f applicable nonbankruptcy law . . . fixes a period for commencing or continuing a civil action . . . and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—
(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case, or
(2) 30 days after the notice of termination or expiration of the stay under section 362 . . . with respect to such claim.

11 U.S.C. § 108(c). The automatic stay remained in effect until 30 days after the case is closed or dismissed. § 362(c)(1), (c)(2). Here, Debtor's discharge was entered on November 12, 2013 and the case was closed by final decree on November 15, 2013. Docs. #28, #30. Therefore, the stay continued to suspend tolling the renewal period until 30 days later, which is December 15, 2013 (159 days after the petition date). As a result, the period to renew the judgment was extended from March 21, 2023 to August 27, 2023. Even though this case was subsequently reopened and closed multiple times after the initial

closure, reopening did not trigger the automatic stay. Therefore, Creditor's lien is still avoidable here.

As of the petition date, Property had an approximate fair market value of \$183,000.00. *Am. Sched. A/B*, Doc. #47. Property was encumbered by a deed of trust in favor of Green Planet Servicing in the amount of \$181,062.00. *Am. Sched. D*, *id.* Debtor claimed a \$1,938.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 703.140(b)(5) (2013). *Am. Sched. C*, *id.*

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

Here, there is no equity to support any judicial liens. Strict application of the § 522(f)(2) formula with respect to Creditor's lien is as follows:

Amount of judgment lien	\$20,856.57
Total amount of unavoidable liens	+ \$181,062.00
Debtor's claimed exemption in Property	+ \$1,938.00
<i>Sum</i>	= \$203,856.57
Debtor's claimed value of interest absent liens	- \$183,000.00
Extent lien impairs exemption	= \$20,856.57

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); *accord. Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); *cf. Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property	\$183,000.00
Total amount of unavoidable liens	- \$181,062.00
Homestead exemption	- \$1,938.00
Remaining equity for judicial liens	= \$0.00
Creditor's judicial lien	- \$20,856.57
Extent Debtor's exemption impaired	= (\$20,856.57)

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall state that Creditor's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.

³ Debtor complied with Fed. R. Bankr. P. 7004(h) and (i) by serving Creditor's CEO via certified mail on April 26, 2023. Doc. #78.

⁴ 3,652 days to account for leap years in 2016 and 2020.

2. [23-10441](#)-B-7 **IN RE: CASANDRA MOEN**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-18-2023 [[16](#)]

SANTANDER CONSUMER USA INC./MV
R. BELL/ATTY. FOR DBT.
SHERYL ITH/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.

Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2017 Dodge Challenger ("Vehicle"). Doc. #16. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). Id.

Casandra Katherine Moen ("Debtor") did not file opposition. Debtor's *Statement of Intention* indicated that the Vehicle would be surrendered to Movant. Doc. #1.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual

hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has missed four pre-petition payments totaling \$2,621.56 and one post-petition payment in the amount of \$655.39. Docs. ##20-21. Additionally, Movant recovered possession of the Vehicle pre-petition on March 2, 2023. *Id.* Since the Vehicle has been recovered, the only issue is disposition of the collateral.

The court also finds that Debtor does not have an equity interest in the Vehicle and Vehicle is not necessary to an effective reorganization because this is a chapter 7 case. Vehicle is valued at \$19,225.00 and Debtor owes \$31,584.83. *Id.*

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

The 14-day stay of Rule 4001(a)(3) will be ordered waived because debtor surrendered the property on March 2, 2023.

3. [23-10569](#)-B-7 **IN RE: MARCO LOZANO**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-24-2023 [\[12\]](#)

SANTANDER CONSUMER USA INC./MV
R. BELL/ATTY. FOR DBT.
SHERYL ITH/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.

Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1) with respect to a 2021 Dodge Challenger ("Vehicle"). Doc. #12. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

Marco Antonio Lozano ("Debtor") did not file opposition.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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 missed one pre-petition payment in the amount of \$734.19. Additionally, Movant recovered the

Vehicle pre-petition on February 11, 2023. Docs. #14, #16. The only issue is disposition of the collateral.

Accordingly, the motion will be granted 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.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because Movant recovered the Vehicle pre-petition and it is a depreciating asset.

11:00 AM

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

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

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

NO RULING.

The court is in receipt of chapter 7 trustee Jeffrey M. Vetter's ("Plaintiff") *Status Conference Statement* filed May 31, 2023. Doc. #23.

Additionally, it does not appear that Plaintiff has properly served the summons, complaint, amended complaint, or related document on defendants Blues Brothers Properties or Eagle Brothers, Inc. in accordance with Fed. R. Bankr. P. ("Rule") 7004. Docs. #7, #11, #13.

This status conference will be called and proceed as scheduled.