

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, July 6, 2022  
Place: Department B – 510 19th Street  
Bakersfield, California

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

*Pursuant to District Court General Order 631, courthouses for the Eastern District of California will be reopened to the public effective June 14, 2021.*

*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 telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878*

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

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

**9:00 AM**

1. [19-10802](#)-B-13     **IN RE: STEVE/SHELLY BIERER**  
[JCW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-11-2022    [[61](#)]

WELLS FARGO BANK, N.A./MV  
D. GARDNER/ATTY. FOR DBT.  
JENNIFER WONG/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted in part; denied in part.

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

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property commonly known as 382 Chimney Canyon Road, Lebec, CA 93225 ("Property"). Doc. #61. Movant also requests attorneys' fees and waiver of the 14-day stay under Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3).

Steve Bierer and Shelly Ann Bierer ("Debtors") timely responded and filed a *Statement of Disputed Material Facts*. Docs. ##67-68.

Movant replied. Doc. #71.

On June 6, 2022, the parties stipulated to continue this motion to July 6, 2022 to allow for additional time to discuss a resolution. Docs. #75; #77. Nothing new has been filed in this case post-continuance.

This matter will be called and proceed as scheduled. The court is inclined to GRANT IN PART and DENY IN PART this motion.

This motion was filed on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the

chapter 13 trustee, the U.S. trustee, or any other party in interest except Debtors 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 except Debtors are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages).

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).

Movant contends that cause exists to lift the automatic stay because Debtors have missed 21 payments, have an unpaid principal balance of \$31,544.22, and are owed \$6,378.75 in arrears. Doc. #61; #63; #65, Ex. 3.

Debtors disagree. Doc. #68. First, Debtors do not consent to the court's resolution of disputed material factual issues pursuant to Fed. R. Bankr. P. 9017.

Second, Debtors contend that they were party to a forbearance agreement with Movant and dispute the default that Movant says has occurred. *Id.* Debtors request that the matter be set for evidentiary hearing and claim that the following facts are in dispute:

1. Whether, as of March 22, 2022, there are one or more defaults in paying post-petition amounts under the agreement between Debtor and Movant.
2. The amount of the unpaid principal balance.
3. The accuracy of Movant's chart (Doc. #65, Ex. 3) setting forth unpaid post-petition payments.

In reply, Movant says that Debtors received a forbearance that temporarily suspended their payments from September 20, 2020 through August 20, 2021. Docs. ##71-72. Upon expiration of the forbearance, payments were to resume beginning September 20, 2021 and Debtors were required to cure the unpaid arrears that occurred during the forbearance. *Id.* No arrangement to cure the unpaid arrears was made and the last payment received by Movant was in June 2020. *Id.*

Movant claims that it has met its burden of proof and established a *prima facie* showing for relief from the automatic stay. Doc. #71. Movant contends that Debtors' opposition consists of blanket statements without any basis or evidence in support those statements. As a result, Movant insists that it is entitled to termination of the stay. *Id.*

The court agrees. Debtors have not provided any evidence in support of their claim that they are not delinquent or that a material factual dispute exists. Based on the moving papers and the record, Movant has produced evidence that Debtors are delinquent at least \$6,378.75, of which \$3,645.00 is from the September 2020 to August 2021 forbearance period. Docs. #63; #65, Exs. 2, 3; #72; #73, Ex. 1. Debtors may disagree with those facts but have provided no evidentiary basis to raise a disputed material factual issue. The motion is not a Request for Admissions.

Though Debtors do not consent to this court's resolution of disputed material factual issues, Debtors have not established any material factual disputes supported by competent evidence. LBR 9014-1 (f) (1) (B) requires opposition to contain evidence establishing factual allegations. Also, the separate statement of material factual disputes must "enumerate discretely each of the material factual issues and *cite the particular portions of the record demonstrating that a factual issue is both material and in dispute.*" (emphasis added). The opposition to the motion does not conform to the requirements. Accordingly, the court is inclined to GRANT IN PART this motion.

This matter will be called and proceed as scheduled. The court intends to GRANT IN PART this motion for cause pursuant to 11 U.S.C. § 362(d) (1).

This motion will be DENIED IN PART as to the request for attorney's fees. Though Movant appears to be over-secured under 11 U.S.C. § 506(b), Movant must separately file and set for hearing a motion for compensation in compliance with the LBR and Federal Rules. If Movant does so, then the court will consider that motion on its merits at the appropriate time.

Additionally, the motion may be GRANTED IN PART at the hearing as to the request for waiver of the 14-day stay under Rule 4001(a) (3) because the record shows that Debtors have failed to make at least 21 post-petition payments and owe more than \$6,378.75 in arrears.

2. [21-12802](#)-B-13      **IN RE: LATANYA LABLUE**  
[MHM-1](#)

MOTION TO DISMISS CASE  
6-8-2022    [\[19\]](#)

MICHAEL MEYER/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.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and (c)(6) for material default by the debtor with respect to a term of a confirmed plan. Doc. #19. Trustee's attorney, Kelsey A. Seib, declares that Debtor is delinquent \$2,995.86 as of June 8, 2022 with an additional payment of \$1,497.88 due June 25, 2022, for a total of \$4,493.74. Doc. #21.

LaTanya Renee LaBlue ("Debtor") timely opposed. Doc. #23. Debtor had an "interruption" at work but is now working again. If Debtor is unable to become current by the hearing, Debtor will file a modified plan. *Id.*

This matter will be called to confirm whether Debtor has either paid the \$4,493.74 in full or filed a modified plan that proposes to cure the delinquency. If Debtor has done neither, 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 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 motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtor 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)(6) for material default of a confirmed plan by failing to make plan payments.

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors. Debtor is delinquent in the amount of \$2,995.86, with one additional payment due before this hearing. Doc. #21.

In addition to the delinquency, Trustee has reviewed the schedules and determined that this case has a liquidation value of \$1,265.25, after trustee compensation, if the case were to be converted to chapter 7. This liquidation value is solely comprised of non-exempt, non-encumbered equity in Debtor's 2015 Toyota Camry. *Id.* This value is comparatively *de minimis* to the expenses that would be required to liquidate. Thus, dismissal, rather than conversion, serves the interests of creditors and the estate.

This matter will be called to confirm whether Debtor has either paid the \$4,493.74 in full or filed a modified plan that proposes to cure the delinquency. If not, this motion will be GRANTED.

3. [22-10815](#)-B-13     **IN RE: CHRISTOPHER HUGHES**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
6-17-2022    [[14](#)]

STEVEN ALPERT/ATTY. FOR DBT.

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

DISPOSITION:     Continued to August 3, 2022 at 9:00 a.m.

ORDER:             The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Christopher Ray Hughes ("Debtor") on May 16, 2022 because Debtor has not scheduled all debts required to be scheduled pursuant to 11 U.S.C. § 521(a). Doc. #14.

Trustee objects because Debtor is married and filed the petition individually but did not list or provide for community debt incurred by Debtor's non-filing spouse in the schedules or chapter 13 plan. *Id.* Trustee says Debtor testified at the June 14, 2022 meeting of creditors that he has been married for 8 years and does not have a pre-marital or post-marital agreement. Having recently separated from his non-filing spouse, Debtor's position is that the spouse should be

liable to pay her own debts, which is why they were not disclosed in the schedules or plan. *Id.*

11 U.S.C. § 521(a)(1)(A) provides that the debtor shall file a list of creditors. "[C]reditor" is defined in 11 U.S.C. § 101(10) as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor; . . ." or an "entity that has a community claim." § 101(10)(A), (B). A "community claim" is a claim that arose before the commencement of the case for which the property of the kind specified in § 541(a)(2) is liable regardless of whether there is any property at the time of the commencement of the bankruptcy case. § 101(7). Since the community claims may be asserted and are subject to discharge in the bankruptcy of one spouse, the Bankruptcy Code provides that property is brought into the estate of that spouse.

Under § 541(a)(2), property of the estate includes all interests of the debtor and the debtor's spouse in community property as of the petition date that is "(A) under the sole, equal, or joint management and control of the debtor; or (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor(s) spouse, to the extent that such interest is so liable." Taking §§ 101(7) and 541(a)(2) together, a community claim is a pre-petition claim for which the community property is liable. *Roos v. Kimmel (In re Kimmel)*, 378 B.R. 630 (B.A.P. 9th Cir. 2007).

Additionally, under Cal. Fam. Code § 910(a), the community estate is liable for a debt incurred by either spouse before or during the marriage, regardless of which spouse had management and control over the property, and regardless of whether one or both spouses are parties to the debt or judgment. Since community claims may be asserted and subject to discharge in the bankruptcy of one spouse, the allowable claims of creditors against property of the estate must be scheduled. *Ibid.* On this basis, Trustee contends that failure to list all community claims requires denial of confirmation of the chapter 13 plan.

This objection will be CONTINUED to August 3, 2022 at 9:00 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtor shall file and serve a written response not later than July 20, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Trustee shall file and serve a reply, if any, by July 27, 2022.

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 27, 2022. If

Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the opposition without a further hearing. If dismissed, the objection will be overruled as moot.

4. [22-10815](#)-B-13     **IN RE: CHRISTOPHER HUGHES**  
[MHM-2](#)

MOTION TO DISMISS CASE  
6-17-2022    [[17](#)]

MICHAEL MEYER/MV  
STEVEN ALPERT/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") moves to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and under § 521 and Federal Rule of Bankruptcy Procedure ("Rule") 1007 for failure to file a complete and accurate *Schedule E/F*. Doc. #17. Trustee says that Debtor failed to provide all creditor information for his non-filing spouse. Doc. #19. Though Debtor has been married for 8 years, he did not list his spouse's debt due to their separation. *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court will GRANT this motion at the hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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 for failure to



file complete and accurate schedules under 11 U.S.C. §§ 521(a)(1)(A), 541(a)(2), 1307(c)(1), and Rule 1007(b)(1)(A).

Rule 1007(b)(1)(A) requires the debtor to file schedules of assets and liabilities. 11 U.S.C. § 521(a)(1)(A) provides that the debtor shall file a list of creditors. "[C]reditor" is defined in 11 U.S.C. § 101(10) as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor; . . ." or an "entity that has a community claim." § 101(10)(A), (B). A "community claim" is a claim that arose before the commencement of the case for which the property of the kind specified in § 541(a)(2) is liable regardless of whether there is any property at the time of the commencement of the bankruptcy case. § 101(7). Since the community claims may be asserted and are subject to discharge in the bankruptcy of one spouse, the Bankruptcy Code provides that property is brought into the estate of that spouse.

Under § 541(a)(2), property of the estate includes all interests of the debtor and the debtor's spouse in community property as of the petition date that is "(A) under the sole, equal, or joint management and control of the debtor; or (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor(s) spouse, to the extent that such interest is so liable." Taking §§ 101(7) and 541(a)(2) together, a community claim is a pre-petition claim for which the community property is liable. *Roos v. Kimmel (In re Kimmel)*, 378 B.R. 630 (B.A.P. 9th Cir. 2007).

Additionally, under Cal. Fam. Code § 910(a), the community estate is liable for a debt incurred by either spouse before or during the marriage, regardless of which spouse had management and control over the property, and regardless of whether one or both spouses are parties to the debt or judgment. Since community claims may be asserted and subject to discharge in the bankruptcy of one spouse, the allowable claims of creditors against property of the estate must be scheduled. *Ibid.*

The record shows that Debtor has unreasonably delayed filing a complete and accurate *Schedule E/F* because the community debts of his non-filing spouse were not listed. No *Amended Schedule E/F* was filed while this motion was pending.

Lastly, Trustee has reviewed the schedules and determined that Debtor's significant assets, a vehicle and real property, are over encumbered. Docs. #1; #17. Debtor has claimed exemptions in the remaining assets, so there is no equity that could be realized for the benefit of a chapter 7 estate. Thus, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

This matter will be called as scheduled to inquire whether any party in interest opposes. In the absence of opposition at the hearing, this motion will be GRANTED, and the case will be dismissed.

5. [22-10217](#)-B-13      **IN RE: ALFREDO HARO**  
[LMF-1](#)

MOTION TO CONFIRM PLAN  
5-27-2022    [\[17\]](#)

ALFREDO HARO/MV  
LAUREN FOLEY/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 Moving Party shall submit a proposed order after hearing approved as to form by Trustee.

Alfredo Haro ("Debtor") seeks confirmation of the *Second Amended Chapter 13 Plan* ("Plan") dated May 27, 2022. Doc. #17. The Plan proposes that Debtor will pay \$2,077/month for months 1-3, and \$2,512/month for months 4-60 with a 100% dividend to allowed, non-priority unsecured claims. Doc. #19.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed pursuant to 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the Plan and comply with the Plan. Doc. #21.

Trustee says that the Plan is not feasible for two reasons. First, the Plan as proposed would take over 62.66 months to fund. *Id.* Second, Debtor has failed to amend *Schedule I* and *J* to reflect current income and expenses. To fund in 60 months, the payment would need to increase to approximately \$2,642 beginning in month 4. Debtor's current monthly net income is \$2,305.20. Doc. #1, *Sched. J*. However, Trustee says that removal of the automobile payment from *Schedule J*, which is now being paid through the Plan, would resolve the issue of feasibility with the increased payment. Doc. #21.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest except Trustee 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 motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Trustee 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).

It appears that Trustee's objection can be resolved in the *Order Confirming Plan* provided that (a) Debtor consents to increasing the Plan payment to \$2,642/month beginning month 4; and (b) Debtor promptly files *Amended Schedules I and J* to evidence an ability to pay the Plan. This matter will be called as scheduled to inquire whether Debtor consents to increasing the Plan payment and whether Debtor has filed amended schedules before the hearing.

If Debtor amends the schedules to prove feasibility of the Plan with Trustee's proposed increased payment, this motion may be GRANTED. Any confirmation order shall be approved as to form by Trustee, include the docket control number of the motion, and shall reference the plan by the date it was filed.

6. [22-10721](#)-B-13      **IN RE: STEPHANIE FOREMAN**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
6-3-2022    [\[25\]](#)

D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION:      Overruled as moot.

ORDER:              The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed May 4, 2022 under 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the plan and comply with the plan; and (a)(4) because 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 in at least the amount that would be paid if the estate was liquidated under chapter 7. Doc. #25.

Thereafter, Stephanie Maryann Foreman ("Debtor") filed the *First Amended Chapter 13 Plan* dated June 14, 2022. Doc. #35. Accordingly, this objection to confirmation will be OVERRULED AS MOOT because Debtor has filed an amended plan.

7. [22-10039](#)-B-13     **IN RE: CHERYLANNE FARLEY**  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-20-2022    [\[30\]](#)

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

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted or continued.

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") moves to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and (e) for failure to file required tax returns for the years 2018 through 2021. Doc. #30.

Cherylanne Lee Farley ("Debtor") timely opposed. Doc. #36. Debtor says that she is experiencing difficulty in having the tax returns prepared because she is ill due to chemotherapy treatments. *Id.* Additionally, Debtor's house flooded, and she can no longer stay there due to black mold. Debtor is attempting to have her tax returns prepared but requests additional time to do so because of these extenuating circumstances. *Id.*

This matter will be called as scheduled. The court will either grant or continue the motion at the hearing.

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 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 motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtor 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). Failure to file complete and accurate schedules constitutes "cause" for dismissal under 11 U.S.C. § 1307(c) (1).

Additionally, 11 U.S.C. § 1308(a) requires the debtor to file with appropriate tax authorities all tax returns for all taxable periods in the 4-year period preceding the petition date not later than the first scheduled § 341 meeting of creditors. On request of a party in interest under 11 U.S.C. § 1307(e), and after notice and a hearing, the court shall dismiss or convert a case upon failure of the debtor to file a tax return. "Although the Debtor may view this as a harsh penalty, the Court must construe a statute according to its unambiguous terms. Under the circumstances of this case, failure to comply with § 1308 results in case dismissal pursuant to § 1307(e)." *In re Perry*, 389 B.R. 62, 66 (Bankr. N.D. Ohio 2008); see also *United States v. Cushing (In re Cushing)*, 401 B.R. 528, 533-34 (B.A.P. 1st Cir. 2009).

Section 1308(b)(1) allows the trustee to hold open the meeting of creditors for a reasonable period of time to allow Debtor to file any unfiled returns, but such period shall not extend beyond 120 days after the meeting of creditors for past due returns or the later of 120 days or the date of the last automatic extension. § 1308(b)(1)(A), (B)(i)-(ii).

Under § 1308(b)(2), after notice and a hearing and ordered "before the tolling of any applicable filing period determined under paragraph (1)," the court may extend that period by an additional 30 days for past due returns, or a period not to extend after the extended due date for non-past due returns, if the debtor demonstrates by a preponderance of the evidence that the failure to file the return is attributable to circumstances beyond the debtor's control. § 1308(b)(2)(A)-(B).

Here, the first meeting of creditors was held on March 8, 2022. Doc. #19. It is undisputed that Debtor failed to file the tax returns before that date. It also appears that Trustee "held open" the meeting of creditors because it was continued four times and is currently scheduled for July 12, 2022. The date of this hearing, July 6, 2022, is the 120th day after the first meeting of creditors.

The record shows that Debtor has unreasonably delayed in filing the requisite tax returns. However, Debtor is ill from chemotherapy and Debtor's house has flooded. Doc. #36. Though no admissible evidence substantiating these claims was included with the response, these are circumstances beyond Debtor's control.

Lastly, Trustee has reviewed the schedules and determined that Debtor's significant assets – vehicles and real property – are over encumbered. Docs. #15; #30. Debtor has claimed exemptions in the remaining assets, so there is no equity that could be realized for the

benefit of a chapter 7 estate. Thus, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

This matter will be called as scheduled to inquire about Trustee's position. This motion may be granted or continued at the hearing. If continued, the deadline to file tax returns will be extended to not more than 30 days beyond the Trustee's extended due date for any return that was past due as of the petition date, or a period not to extend the applicable extended due date for any return that was not past due on the petition date.

8. [19-12851](#)-B-13     **IN RE: CAROL TAYLOR**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-26-2022    [[57](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.  
DISMISSED: 05/19/2022. FEE PAID ON 5/26/2022

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 the case was dismissed on May 19, 2022 and the filing fee due in the amount of \$25.00 was paid on May 26, 2022. Therefore, the *Order to Show Cause* will be VACATED.

9. [21-12757](#)-B-13     **IN RE: BRYAN REED AND EMMA NIEVA**  
[MHM-2](#)

MOTION TO DISMISS CASE  
6-8-2022    [[30](#)]

MICHAEL MEYER/MV  
VINCENT GORSKI/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

ORDER:             The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors and failure to confirm a chapter 13 plan. Doc. #30.

Bryan Eugene Reed and Emma Rose Saldonido Nieva ("Debtors") did not respond.

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

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

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 here under 11 U.S.C. § 1307(c)(1) for unreasonable delay and failure to confirm a chapter 13 plan.

Debtors filed chapter 13 bankruptcy on November 30, 2021. Doc. #1. The record shows that on March 15, 2022, Trustee objected to Debtors' *Chapter 13 Plan* dated December 1, 2021. MHM-1. The objection was sustained on May 5, 2022. Doc. #29. Since then, Debtors have not filed an amended plan and did not respond to this motion.

Additionally, Trustee has reviewed Debtors' *Schedules A/B* and *D*, which show that Debtors' significant assets, a vehicle and real property, are over encumbered and exempted. Doc. #31. There is no equity that could be realized for the benefit of the estate, so 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 dismissed.

10. [22-10763](#)-B-13     **IN RE: CHRISTOPHER/HOLLY MASSEY**  
[VVF-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY AMERICAN HONDA FINANCE  
CORPORATION  
5-26-2022    [\[14\]](#)

AMERICAN HONDA FINANCE  
CORPORATION/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.  
VINCENT FROUNJIAN/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Overruled without prejudice to filing an amended  
objection within 14 days or seeking court  
approval of a stipulation signed by Trustee.

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

American Honda Finance Corporation ("Creditor") objects to the plan confirmation of Christopher Scott Massey and Holly Lyn Massey ("Debtors"). Doc. #14. Creditor holds a \$21,143.00 Class 2(B) claim secured by a 2015 Honda Odyssey. Claim 1. Debtors propose to pay Creditor the reduced amount of \$12,300 at 4% interest through the plan, which is based on the value of the vehicle. Doc. #3.

On June 9, 2022, Debtors and Creditor stipulated that Debtors would pay Creditor \$20,715.89 through the plan with 5.99% interest. Doc. #21. The stipulation was neither approved by the chapter 13 trustee nor the court.

However, the objection does not comply with the Local Rules of Practice ("LBR"). LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the court website and the above disclosure are not included in the notice of hearing.

This objection will be called and proceed as scheduled. The court is inclined to OVERRULE the objection WITHOUT PREJUDICE to refile an amended objection within 14 days of the date of this order, or to seeking court approval of a stipulation signed by Trustee on the amount to be paid on account of Creditor's claim.



11. [22-10569](#)-B-13     **IN RE: SUMAIRA RAHMAN**  
[MHM-1](#)

MOTION TO DISMISS CASE  
5-23-2022    [\[22\]](#)

MICHAEL MEYER/MV  
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.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors, § 521(a)(3)(4) for failure to cooperate with the trustee by providing required documents, and § 1307(e) for failure to file required tax returns for the 2021 tax year. Doc. #22. Specifically, Trustee says that Debtor has failed to provide (a) deeds of trust for the Oxnard property; (b) profit and loss statements; (c) business questionnaires; (d) rental agreements; (e) proof of income from CW/CF Grant; (f) a spousal waiver; and (g) proof of all income. *Id.*

On June 21, 2022, Trustee received a copy of Debtor's 2021 tax returns and withdrew the third cause for dismissal. Doc. #66.

Debtor filed opposition on June 23, 2022, but it was not timely filed by the June 22, 2022 opposition deadline.<sup>1</sup> Doc. #69. Debtor says that all requested documents have been provided to Trustee, including (a) deeds of trust on the Oxnard property; (b) profit and loss statements; (c) business questionnaires; (d) rental agreements; (e) proof of income from CW/CF Grant; (f) a spousal waiver; and (g) proof of all income. *Id.* Since Debtor has provided all of the requested documents, Debtor asks the court to deny this motion.

This matter will be called and proceed as scheduled to inquire about Trustee's reply to Debtor's opposition. Since Debtor appears to have resolved Trustee's objection by provided all requisite documents, the court is inclined to DENY WITHOUT PREJUDICE this motion.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

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 for unreasonable delay and failure to cooperate with Trustee under 11 U.S.C. §§ 1307(c)(1) and 521(a)(3) and (4).

Additionally, Trustee has reviewed Debtor's schedules and determined that there is \$98,558.75 in equity that could be liquidated for the benefit of the estate. Doc. #24. This amount is comprised of Debtor's interest in real property and 2020 tax refund, but there may be additional equity from Debtor's 2021 tax returns. *Id.* There is equity that could be realized for the benefit of the estate, so conversion, rather than dismissal, is in the best interests of creditors and the estate.

Debtor claims to have submitted the required documents to Trustee. Doc. #69. This matter will be called as scheduled to inquire whether Trustee has received the documents. If so, this motion will be DENIED WITHOUT PREJUDICE. If not, this motion may be GRANTED, and the case CONVERTED TO CHAPTER 7 at the hearing.

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<sup>1</sup> The court notes that the opposition is dated June 21, 2022. Doc. #69.

12. [21-12176](#)-B-13      **IN RE: JAIME/MIREYA MURILLO**  
[MHM-1](#)

MOTION TO DISMISS CASE  
6-8-2022    [\[41\]](#)

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

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

DISPOSITION:      Withdrawn; dropped from calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this motion on June 24, 2022. Doc. #49. Accordingly, this motion has been WITHDRAWN and will be dropped from calendar.

10:00 AM

1. [22-10806](#)-B-7     **IN RE: LARRY TAYLOR**  
[RSW-2](#)

MOTION TO EXTEND DEADLINE TO FILE SCHEDULES OR PROVIDE  
REQUIRED INFORMATION  
6-14-2022    [[18](#)]

LARRY TAYLOR/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
SECOND REQUEST

TENTATIVE RULING:            This matter shall proceed as scheduled.

DISPOSITION:                    Granted. Debtor to file required documents on or  
before August 1, 2022.

ORDER:                            The court will issue the order.

Debtor Larry Taylor ("Debtor") asks for a further extension of time to  
file the required updated documents after conversion under Fed. R.  
Bankr. Proc. ("Rule") 1019. Doc. #18.

This motion was filed and served pursuant to Local Rule of Practice  
("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition  
is presented at the hearing, the court intends to enter the  
respondents' defaults and grant the motion. If opposition is presented  
at the hearing, the court will consider the opposition and whether  
further hearing is proper pursuant to LBR 9014-1(f)(2). The court will  
issue an order if a further hearing is necessary.

This began as a joint Chapter 13 case filed by Debtor and his spouse  
three years ago. See Case No. 19-12851, Doc. #1. The case was split,  
and a new case number assigned to this case on May 13, 2022. Doc. #1.  
Shortly after the case was split, Debtor converted the case to Chapter  
7 and made his first *ex parte* request for an extension of time to file  
the required updated documents under Rule 1019, which was granted.  
Docs. #12, #15. This extension expired June 14, 2022.

On that date, this motion was filed and served on the case Trustee and  
the United States Trustee. Doc. #22. Further extension is requested to  
file Form 122 A-1 - *Statement of Monthly Income*, and Form 8 -  
*Statement of Intention*.

Under Rule 1019(b), the court may grant an extension of time to file  
updated documents upon conversion "for cause." Debtor's counsel here  
filed a declaration stating that Debtor's son contacted counsel on  
June 13, 2022 to advise that Debtor was hospitalized for at least six  
weeks. Docs. #18, #21. So, this extension is requested.

The statement is hearsay. Should any party in interest oppose this motion, the hearing will be continued for the filing of further evidence and briefs. The declaration will be excluded.

If there is no opposition, the statement will be admitted under the residual hearsay exception. Fed R. Evid. 807. There is no reason to believe the son misrepresented the health status of his father. Further, the docket reveals that at the first meeting of creditors counsel appeared but not Debtor. The meeting was continued to July 8, 2022.

Assuming the statement is allowed as evidence, the court is persuaded that a short extension is appropriate. Debtor asked for six weeks. The proposed extension is longer.

The motion will be GRANTED. Debtor shall file complete updated documents required by Rule 1019 on or before August 1, 2022.

2. [20-13420](#)-B-7     **IN RE: CHRISTOPHER MARTENS**  
[DMG-8](#)

MOTION TO COMPEL  
6-9-2022    [[122](#)]

JEFFREY VETTER/MV  
PETER FEAR/ATTY. FOR DBT.  
D. GARDNER/ATTY. FOR MV.  
WITHDRAWN

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

DISPOSITION:     Withdrawn; dropped from calendar.

NO ORDER REQUIRED.

Chapter 7 trustee Jeffrey M. Vetter withdrew this motion to compel on June 22, 2022. Doc. #127. Accordingly, this motion has been WITHDRAWN and will be dropped from calendar.

3. [22-10271](#)-B-7     **IN RE: EVERARDO FLORES**  
[RSW-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
6-10-2022     [\[24\]](#)

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 Moving Party shall submit a proposed order after hearing.

Everardo Flores ("Debtor") seeks to convert this case from chapter 7 to chapter 13 under 11 U.S.C. § 706(a). Doc. #24.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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

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

11 U.S.C. § 109(e) sets forth the eligibility requirements for Chapter 13 relief. Debtor falls within the limits for total debts according to the schedules and amended summary of assets and liabilities. Doc. #1. The question is whether Debtor has regular income. The schedules indicate that Debtor works as a Safety Specialist for Amazon and Debtor's non-filing spouse is a vet assistant for Banfield Pet Hospital. *Id.*, *Sched. I*. Debtor and the non-filing spouse earn an

approximate combined income of \$5,056.57 per month, with \$5,020.00 in expenses, leaving a monthly net income of \$36.57 per month. *Id.*, *Sched. J*. Though Debtor does have regular income, it is unclear whether Debtor will be able to propose and confirm a chapter 13 plan.

Written opposition was not required but may be presented at the hearing. There is no indication that this bankruptcy was filed in bad faith. Debtor does not appear to have any previous bankruptcy filings in this district.

The court finds that this case has not been previously converted to chapter 7 from another chapter. If Debtor provides sufficient clarification regarding his intentions to file a chapter 13 plan and pay off unsecured claims, Debtor may be eligible to be a debtor under chapter 13 in conformance with 11 U.S.C. §§ 101, 109, and 1328(f), and the case would not immediately be converted or dismissed under § 1307(c). In the absence of opposition at the hearing, this motion may be GRANTED.

4. [22-10885](#)-B-7      **IN RE: SYNCHRONY OF VISALIA, INC.**  
[LKW-3](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 11  
6-14-2022    [\[27\]](#)

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                 Granted.

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

Synchrony of Visalia, Inc. ("Debtor") seeks to convert this case from chapter 7 to subchapter V, chapter 11 under 11 U.S.C. § 706(a). Doc. #27.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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

The Supreme Court in *Marrama v. Citizens Bank*, 549 U.S. 365, 371-72 (2007), held that a debtor does not have an absolute right to convert under § 706(a), but also must be eligible to be a debtor under subchapter V. Therefore, the court must find that Debtor is eligible to be a subchapter V debtor under 11 U.S.C. §§ 101 and 109 such that the case would not be dismissed or converted under § 1112.

Under 11 U.S.C. § 101(51D), a "small business debtor" is defined as a person engaged in commercial or business activities that has aggregate noncontingent liquidated secured and unsecured debts as of the petition date not exceeding \$2,725,625.00, of which not less than 50% arose from commercial or business activities. Debtor may convert to subchapter V, chapter 11 if the case has not been converted from another chapter and the debtor is eligible for relief under chapter 11. *In re Nichols*, 10 F.4th 956 (9th Cir. 2021), citing *Law v. Siegel*, 571 U.S. 415 (2014).

Maria Ortiz Nance, Debtor's Chief Executive Officer and Authorized Representative, declares that Debtor is eligible to be a debtor under subchapter V, chapter 11 because Debtor is a "small business debtor" as defined under the Bankruptcy Code and Debtor's debt does not exceed the limits set out in § 109. Doc. #29. Specifically, Debtor has less than \$2,725,625.00 in noncontingent liquidated debt. *Id.*

Debtor filed chapter 7 on an emergency basis. *Id.* After filing bankruptcy, Debtor's attorney consulted with Debtor's general litigation counsel and determined that the interests of all parties would be served by converting the case to subchapter V, chapter 11. *Id.* Debtor's case has not been previously converted and Ortiz believes that Debtor can file a chapter 11 plan that satisfies the requirements to reorganize its financial affairs. *Id.* Debtor falls within the limits for total debts according to the schedules and amended summary of assets and liabilities. Doc. #1.

Debtor filed a supplemental points and authorities on June 20, 2022. Doc. #33. As to the question of whether a "nonprofit" business such as Debtor is eligible for relief under subchapter V of chapter 11, Debtor included a copy of *In re RS Air, LLC*, 2022 WL 1288608 (B.A.P. 9th Cir. Apr. 26, 2022) for reference. Debtor argues that this case answers the question in the affirmative and allows Debtor to convert to subchapter V, chapter 11.

No party in interest was required to file written opposition, which may be presented at the hearing. This matter will be called and proceed as scheduled to inquire whether any parties in interest oppose. In the absence of opposition, this motion will be GRANTED.

5. [22-10752](#)-B-7     **IN RE: BRENT/PAULA ALLDREDGE**  
[PBB-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
7-1-2022     [\[18\]](#)

PETER BUNTING/ATTY. FOR DBT.  
OST 7/1/2022

NO RULING.

Brent Elliot Alldredge and Paula Lee Alldredge ("Debtors") seek to convert this case from chapter 7 to chapter 13 under 11 U.S.C. § 706(a). Doc. #18.

This motion was filed with a request for an *Order Shortening Time* ("OST") on July 1, 2022. Doc. #19. The court issued an OST that same day and ordered service on all parties in interest not later than July 1, 2022. Doc. #24. Debtors served the motion, notice, declaration, and OST on all parties in interest on July 1, 2022. Doc. #26.

Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

As a preliminary matter, no notice of hearing was filed with this motion. LBR 9014-1(d)(1) requires every motion or other request for an order to be comprised of a motion, notice, evidence, and a certificate of service. LBR 9014-1(d)(3)(B)(i), (iii), and (f)(3) requires the notice of hearing to inform respondents that written opposition is not required and may be presented at the hearing, and notify them that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

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

The Supreme Court in *Marrama v. Citizens Bank*, 549 U.S. 365, 371-72 (2007), held that a debtor does not have an absolute right to convert a chapter 13 under § 706(a), but also must be eligible to be a debtor under chapter 13. The Supreme Court stated, "[i]n practical effect, a ruling that an individual's Chapter 13 case should be dismissed or converted to Chapter 7 because of prepetition bad-faith conduct,



including fraudulent acts committed in an earlier Chapter 7 proceeding, is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13." Therefore, the court must find that Debtors are eligible to be debtors under chapter 13 such that the case would not be converted or dismissed under 11 U.S.C. § 1307(c).

11 U.S.C. § 109(e) sets forth the eligibility requirements for Chapter 13 relief. Debtors fall within the limits for total debts according to the schedules and amended summary of assets and liabilities. Doc. #1. The question is whether Debtors have regular income. The schedules indicate that Debtors work as a Tile Foreman for Better Flooring, Inc. and as a Bartender for Skyline Bar & Grill. *Id.*, *Sched. I*. Debtors earn an approximate combined income of \$7,537.83 per month, with \$8,243.73 in expenses, leaving a monthly deficit of -\$705.90 per month. *Id.*, *Sched. J*. Though Debtors do have regular income, it is unclear whether Debtors will be able to propose and confirm a chapter 13 plan given their monthly deficit.

Written opposition was not required but may be presented at the hearing. There is no indication that this bankruptcy was filed in bad faith. Debtors each have a previous bankruptcy filing separately, but they date back to 2000 and 2004. Case Nos. 99-19105; 04-15367. Additionally, Debtors have one joint bankruptcy that was filed on September 12, 2013. Case No. 13-16131. All three bankruptcies resulted in discharge, but all were entered more than four years ago. Therefore, Debtors are eligible to be chapter 13 debtors under 11 U.S.C. §§ 101, 109, and 1328(f), and the case would not immediately be converted or dismissed under § 1307(c).

The court finds that this case has not been previously converted to chapter 7 from another chapter. If Debtor provides sufficient clarification regarding his intentions to file a chapter 13 plan and pay off unsecured claims, Debtor may be eligible to be a debtor under chapter 13 in conformance with 11 U.S.C. §§ 101, 109, and 1328(f), and the case would not immediately be converted or dismissed under § 1307(c). In the absence of opposition at the hearing, this motion may be GRANTED.

11:00 AM

1. [22-10002](#)-B-7     **IN RE: GARRET BROWN**  
[22-1011](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
4-11-2022     [[1](#)]

BROWN V. MIDLAND CREDIT  
MANAGEMENT  
PATRICK KAVANAGH/ATTY. FOR PL.

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

NO RULING.

Debtor Garret T. Brown ("Plaintiff") filed this adversary complaint on April 11, 2022 and a summons was issued April 12, 2022. Doc. #1. On April 13, 2022, Plaintiff served the summons and complaint on creditor Midland Credit Management ("Defendant") in accordance with Fed. R. Bankr. P. 7004(b)(3). Doc. #6. The deadline for Defendant to file an answer was May 12, 2022. Defendant did not file an answer by that date, so the court directed Plaintiff to seek entry of default on June 8, 2022 and continued this status conference to July 6, 2022. Docs. ##7-8. No requests for entry of default were ever filed.

On June 30, 2022, Defendant filed an Answer. Doc. #10. Accordingly, this status conference will be called and proceed as scheduled.

2. [17-11028](#)-B-11     **IN RE: PACE DIVERSIFIED CORPORATION**  
[18-1006](#)

POST-TRIAL STATUS CONFERENCE RE: COMPLAINT  
2-5-2018     [[1](#)]

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

NO RULING.

The court is in receipt of the parties' *Joint Status Report* filed June 27, 2022. Doc. #248. This post-trial status conference will proceed as scheduled to discuss simultaneous post-trial submissions. The court intends to continue this post-trial status conference to a date determined at the hearing.

3. [21-12598](#)-B-7    **IN RE: YINGCHUN LOU**  
[22-1008](#)    [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
3-30-2022    [[1](#)]

U.S. TRUSTEE V. LOU  
JASON BLUMBERG/ATTY. FOR PL.  
DISMISSED 06/09/2022

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

DISPOSITION:        The status conference will be concluded.

ORDER:                The court will issue an order.

On June 9, 2022, the court issued an order dismissing this case.  
Doc. #15. The adversary proceeding was closed on June 27, 2022.  
Accordingly, this status conference is CONCLUDED and removed from  
calendar because the case has already been dismissed.