



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

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

Hearing Date: Thursday, July 6, 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.

Parties in interest and members of the public may connect to ZoomGov, free of charge, using the information provided:

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Please join at least 10 minutes before the start of your hearing. You are required to give the court 24 hours advance notice on [Court Calendar](#).

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. [23-10907](#)-B-13 **IN RE: LAURA MIRANDA**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR FIRST FRANKLIN
MORTGAGE LOAN TRUST
5-30-2023 [[14](#)]

FIRST FRANKLIN MORTGAGE LOAN TRUST/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
RESPONSIVE PLEADING

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

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

ORDER: The court will issue an order.

First Franklin Mortgage Loan Trust ("Creditor") objects to confirmation of the *Amended Chapter 13 Plan* filed by Laura Elena Miranda ("Debtor") on May 3, 2023. Doc. #14.

Debtor filed a written response. Doc. #23.

Creditor objects for two reasons. First, Creditor has a secured claim in the approximate amount of \$93,628.36, which is secured by real property located at 963 Buna Lane, Bakersfield, CA 93307 ("Property"). *Exs. A-C*, Doc. #16. The plan lists Creditor as having a \$42,000 claim in Class 2(C) for claims reduced to \$0 based on the value of collateral. Creditor objects under 11 U.S.C. § 1322(b)(5) because the plan does not provide for the curing of the full amount of arrears owed on Creditor's claim. Doc. #14.

Second, Creditor argues that the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the plan provides for 36 monthly payments of \$200.00 and Debtor's monthly net income is only \$200.46. *Id.* If Debtor cures the arrearage owed to Creditor, there will be insufficient funds to pay the cure amount plus the plan payment. *Id.*

In response, Debtor notes that the plan is not proposing to pay Creditor \$42,000; instead, Creditor will be paid \$0 based on the value of the collateral and Creditor's claim will be treated as a general unsecured claim. Doc. #23. Debtor has filed a motion to value collateral that is set for hearing on August 9, 2023. See RSW-1; Doc. #18. If that motion is granted, then the plan will be feasible as is.

This matter will be CONTINUED to August 9, 2023 at 9:00 a.m. to be heard in connection with Debtor's motion to value collateral.

2. [23-10215](#)-B-13 **IN RE: ALICE CAMERON**
[MHM-1](#)

MOTION TO DISMISS CASE
5-11-2023 [[35](#)]

D. GARDNER/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") 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 commence making timely payments due under the plan. Doc. #35.

Debtor's attorney responded, indicating that he has been unable get into contact with Debtor or Debtor's family to form a defense or file a modified plan. Doc. #44.

This matter will be called and proceed as scheduled. The court is inclined to GRANT the motion.

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.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors and failure to commence making plan payments. Debtor is delinquent \$4,500.00 as of May 11, 2023. Doc. #37. Before the hearing on this motion, additional payments of \$4,500.00 will become due on May 25 and June 25, 2023, resulting in a total delinquency of \$13,500.00 on the date of the hearing.

Trustee has reviewed the schedules and determined that Debtor's significant assets—vehicles and real property—are over encumbered or exempted. Since there is no equity that could be realized for the benefit of the estate, 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 on payments or whether a modified plan has been filed. If so, this motion may be CONTINUED to the date and time of the plan confirmation hearing. Otherwise, this motion may be GRANTED, and the case dismissed.

3. [22-11720](#)-B-13 **IN RE: ERIN STEVENSON**
[MJD-1](#)

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

ERIN STEVENSON/MV
MATTHEW DECAMINADA/ATTY. FOR DBT.
DISMISSED 06/08/2023

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court entered an order dismissing this case on June 8, 2023. Doc. #77. Accordingly, this motion will be DENIED AS MOOT.

4. [23-10722](#)-B-13 **IN RE: ADAM RIVERA**
[PLG-1](#)

MOTION TO CONFIRM PLAN
5-19-2023 [\[14\]](#)

ADAM RIVERA/MV
RABIN POURNAZARIAN/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.

Adam Patrick Rivera ("Debtor") moves for an order confirming the *First Amended Chapter 13 Plan* dated May 19, 2023. Doc. #14. No party in interest timely filed written opposition.

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

Here, the 60-month plan proposes that Debtor shall make payments of \$2,045.00 per month for 1 month and \$2,950.00 per month for 59 months with a 55% dividend to allowed, non-priority unsecured claims. Doc. #18. Debtor's *Amended Schedules I & J* indicate receipt of \$2,957.87 in monthly net income, which is sufficient to fund the proposed plan payment. Doc. #13.

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.

5. [23-10030](#)-B-13 **IN RE: CRISTY PAREDES**
[MHM-2](#)

MOTION TO DISMISS CASE
5-25-2023 [\[41\]](#)

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 that will strike the opposition.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause under 11 U.S.C. § 1307(c) and (c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and failure to confirm a Chapter 13 Plan. Doc. #41.

Cristy Paredes ("Debtor") filed a response on June 16, 2023. Doc. #45. Debtor originally intended to sell her home to pay off the plan but recently changed her mind. Debtor will file a motion to confirm a modified plan. The court notes that Debtor's opposition was not supported by admissible evidence. Accordingly, it is stricken and not considered since there is no evidence supporting the factual contentions in the opposition.

This matter will be called as scheduled to inquire whether Debtor has filed a modified plan and motion to confirm the same. If so, this motion may be continued to the date and time of the plan confirmation hearing; otherwise, the 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 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 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 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) and (c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and failure to confirm a chapter 13 plan.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors and failure to confirm a chapter 13 plan. This case was filed on January 6, 2023 and has been pending for five months.

Trustee has reviewed the schedules and determined that Debtor's real property is exempted and Debtor's personal property is encumbered. Since there is no equity that could be realized for the benefit of the estate, 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 a modified plan has been filed. If so, this motion may be CONTINUED to the date and time of the plan confirmation hearing. Otherwise, this motion may be GRANTED, and the case dismissed.

6. [23-10946](#)-B-13 **IN RE: KENDRA AMOS**
[MHM-1](#)

MOTION TO DISMISS CASE
6-5-2023 [\[20\]](#)

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 under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 109(h) for failure to timely complete credit counseling. Doc #20. Kendra Amos ("Debtor") did not oppose.

This matter will be called and proceed as scheduled because Debtor is *pro se*. The court intends to GRANT this motion.

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). 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 under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors.

Additionally, under 11 U.S.C. § 109(h), an individual is ineligible to be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition, received an individual briefing from an approved nonprofit budget and credit counseling agency described in § 111(a).

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. Debtor failed to set a plan for hearing with notice to creditors and failed to timely complete credit counseling as required by 11 U.S.C. § 109(h). Therefore, Debtor is ineligible to be a chapter 13 debtor. The court need not determine whether the case should be dismissed or converted to chapter 7 because Debtor is not eligible to be a chapter 7 debtor either.

This matter will be called as scheduled because Debtor is *pro se*. The court intends to GRANT this motion and dismiss the case.

7. [21-11149](#)-B-13 **IN RE: DENNIS/LAUREN DEVERA**
[RSW-2](#)

MOTION FOR AUTHORIZATION TO RECEIVE FUNDS FROM CALHFA
6-14-2023 [\[39\]](#)

LAUREN DEVERA/MV
ROBERT WILLIAMS/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 Local Rules of Practice ("LBR").

Here, the certificate of service does not comply with 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").¹

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

¹ The Official Form and related information can be found on the court's website. See, <https://www.caeb.uscourts.gov/CertificateofServiceForm> (visited June 27, 2023).

8. [20-10862](#)-B-13 **IN RE: GLENN/CHRISTY CLOUD**
[MHM-1](#)

MOTION TO DISMISS CASE
5-31-2023 [\[55\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted as modified or denied without prejudice.

ORDER: The court will issue an order that will strike the opposition.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay by the debtors that is prejudicial to creditors and material default with respect to a term of a confirmed plan. Doc #55.

Glenn E. Cloud and Christy R. Cloud (collectively "Debtors") timely responded. Doc. #61. Debtors intend to become current on plan payments prior to the hearing on this matter. The court notes that Debtors failed to include any admissible evidence in support of their contention. Accordingly, the opposition will be stricken and not considered. The opposition contains no factual support for the contentions.

This matter will be called and proceed as scheduled to inquire whether Debtors are current on plan payments. If so, this motion will be DENIED WITHOUT PREJUDICE; if not, this motion may be GRANTED, and the case may be CONVERTED TO CHAPTER 7.

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 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). *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 under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay and material default of a confirmed plan.

The record shows that there has been unreasonable delay by the Debtors that is prejudicial to creditors and material default with respect to a term of a confirmed plan. As of May 31, 2023, Debtors are delinquent in the amount of \$6,200.00. Doc. #57. Before this hearing, another payment in that amount of \$2,000.00 will also come due on June 25, 2023, resulting in a total delinquency of \$8,200.00. In response, Debtors claim that they will become current on all plan payments, including June, prior to the hearing. Doc. #61.

In addition, Trustee has determined that this case may have a liquidation value of \$31,522.50 after trustee compensation. Doc. #57. This amount consists of the value of Debtor's 2013 Toyota Camry and mobile home. *Id.* Therefore, conversion, rather than dismissal, best serves the interests of creditors and the estate.

This matter will be called and proceed as scheduled to inquire whether Debtors are 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 CONVERTED TO CHAPTER 7.

9. [23-10472](#)-B-13 **IN RE: CRYSTAL JOHNSON**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
6-13-2023 [[17](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Continued to August 9, 2023 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 Crystal Sheena Johnson ("Debtor") on March 26, 2023 under 11 U.S.C. § 1325(a)(4) and (a)(6) because Debtor has failed to demonstrate that unsecured creditors would receive more than they would if this case were to be liquidated under chapter 7 and Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #17. Trustee indicates that Debtor has not made any plan payments and is delinquent in the amount of \$1,034.00.

This objection will be CONTINUED to August 9, 2023 at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's objection to confirmation is withdrawn, the Debtor shall file and serve a written response to the objection not later than July 26, 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 August 2, 2023.

If the 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 August 2, 2023. If the Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

10. [23-10487](#)-B-13 **IN RE: CHERYLANNE FARLEY**
[MHM-2](#)

MOTION TO DISMISS CASE
6-7-2023 [\[24\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

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

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

Chapter 13 trustee Michel Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. §§ 1307(c)(1), 341, and 1308(a) for unreasonable delay by the debtor that is prejudicial to creditors, failure to appear and testify at the § 341(a) meeting of creditors held on June 6, 2023, and failure to file tax returns for the year 2022. Doc. #24.

Cherylanne Lee Farley ("Debtor") timely opposed. Doc. #30. Debtor's attorney appeared at the June 6, 2023 meeting of creditors but Debtor was unable to appear due to illness. Debtor is undergoing chemotherapy treatments and is very ill. For the same reason, Debtor has been unable to have her 2022 tax returns prepared. *Id.*

Trustee has also filed another motion to dismiss scheduled for hearing on August 9, 2023, at 9:00 am. MHM-3. This motion is also based upon failure of the debtor to make plan payments.

This motion will be CONTINUED to August 9, 2023 at 9:00 a.m.

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 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). *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 under 11 U.S.C. § 1307(c)(1), 341, and 1308(a) for unreasonable delay by the debtor that is prejudicial to creditors, failure to appear and testify at the 341 meeting of creditors, and failure to file 2022 tax returns.

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors because Debtor failed to appear at the meeting of creditors and failed to file 2022 taxes. The court will inquire whether Debtor is eligible for an extension of the filing deadline for 2022 returns. Even if eligible, the bankruptcy code requires the filing of the returns. § 1308. There is no record of attempts by Debtor to promptly move for relief from the requirements.

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

In response, Debtor indicates that she was unable to appear at the 341 meeting and file 2022 taxes because she is currently undergoing chemotherapy. Doc. #30. There is no evidence supporting this factual assertion. Simply allegations of counsel. The court will strike this opposition unless a proper evidentiary record is made supporting the opposition by serving and filing the necessary declarations on or before July 26, 2023.

This matter will be called and proceed as scheduled. The court is inclined to CONTINUE the hearing on this motion to August 9, 2023 at 9:00 a.m.

11. [23-10290](#)-B-13 **IN RE: EMILY MARTIN**
[RSW-2](#)

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

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

After posting the original pre-hearing dispositions, the court supplemented its intended ruling on this matter.

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 June 7, 2023. Doc. #46.

Emily Marie Martin ("Debtor") moved 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 responded, agreeing to increase the plan payment by \$12.30 beginning in month 3. Doc. #37. This concession appears to resolve Trustee's objection.

After Debtor's response, 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 was continued to July 6, 2023 and Debtor was directed to file a written response to the objections with admissible evidence not later than June 22, 2023. Docs. ##46-47. Trustee's and Creditor's replies, if any, were due not later than June 29, 2023. *Id.*

Debtor timely filed a written response, declaration, and exhibits. Docs. ##49-51. Trustee replied. Doc. #53.

First, Debtor claims treatment of Creditor's claim is a standard provision that will pay both the regular monthly payment and the arrears through the plan. *Id.* Debtor contends that Creditor does not need to "accept" the plan because this is a chapter 13 case, rather than a chapter 11. *Id.* Although Debtor's parents were the original borrowers on the note securing Creditor's claim, whether they are alive makes no difference for plan confirmation purposes. When Debtor's parents divorced, Debtor's father's interest passed to Debtor's mother, which Debtor inherited when Debtor's mother died. Doc. #50. Title was put into Debtor's name on February 6, 2023. However, Debtor has failed to provide any documentation or other evidence proving that Debtor inherited title to the subject property. Although the court agrees that Creditor's non-acceptance of the plan is irrelevant, there is no evidence in support of the contention that Debtor possesses title to the property subject to its encumbrances.

Second, Debtor agrees that she has to prove feasibility. Debtor is now employed and is looking for a second job, but Debtor has failed to file *Amended Schedules I & J* evidencing her new income and expenses. Debtor's son, who lives with Debtor, has purportedly agreed to assist Debtor for the entire five years of the plan. Debtor included copies of her son's pay statements as evidence. *Ex. B*, Doc. #51. However, there is no declaration from Debtor's son agreeing to the proposed financial assistance for the life of the plan. Debtor also has a boarder who is paying \$550.00 per month in rent and one-third of all household expenses, but no evidence of such agreement has been provided.

There is also a complete lack of foundation for the admission of the exhibits. Even Debtor's reply declaration does not attempt to establish a foundation for her own purported pay stubs. There is therefore virtually no proof of feasibility.

Lastly, Debtor does not address Creditor's contention that the plan fails to promptly cure its arrears as required by 11 U.S.C. § 1322(b)(5). Creditor's claim is listed in Class 1 for claims to be paid by Trustee. Doc. #30. The plan lists arrears for Creditor's claim in the amount of \$26,000.00. Meanwhile, Creditor's Proof of Claim No. 2-1 filed on May 2, 2023 lists a claimed arrearage of \$28,233.38. Claim 2. Section 3.07(b)(2) of the plan states that if a Class 1 creditor's proof of claim demands a higher or lower post-petition monthly payment, the plan payment shall be adjusted accordingly.

Here, the plan understates the amount of arrears that will be paid to Creditor. Although § 3.02 of the plan provides that it is the proof of claim, and not the plan itself, that determines the amount that will be repaid, § 3.07(b)(2) requires that the payment be adjusted accordingly for a class 1 claim.

Trustee's reply indicates that the plan payment would need to be \$1,653.60 per month for months 3 to 60 to fund the plan. Doc. #53. However, Debtor's *Schedule J* filed on April 25, 2023 indicates Debtor has monthly net income of \$1,550.00, so the increased plan payments are not feasible.

This matter will be called and proceed as scheduled. The court is inclined to SUSTAIN the objections as to all issues because Debtor failed to provide evidence of her interest in the property, Debtor has failed to provide evidence in support of plan feasibility, and the plan does not promptly cure Creditor's pre-petition arrears as required by 11 U.S.C. § 1322(b)(5). As a result, the court intends to DENY WITHOUT PREJUDICE this motion.

10:00 AM

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

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY
6-15-2023 [[1119](#)]

KIA INVESTMENTS, LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
T. BELDEN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order with the stipulation attached as an exhibit and shall separately file the stipulation and docket it as a stipulation.

Kia Investments, LLC ("Movant") requests an order approving a joint stipulation ("Stipulation") with chapter 7 trustee Jeffrey M. Vetter ("Trustee") under Fed. R. Bankr. P. ("Rule") 4001(d). Doc. #1119. The Stipulation also provides for waiver of the 14-day stay of Rule 4001(a)(3). Additionally, Trustee filed a *Notice of Abandonment* on April 13, 2023, abandoning the estate's interest in all of Debtor's trucks and trailers. Doc. #1038.

Written opposition was not required and may be presented at the hearing. 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.

Movant is a secured creditor of Freon Logistics ("Debtor") with a perfected security interest in real property located at 5407 Stockdale Highway, Bakersfield, CA 93309 ("Property"). *Exs. B-C*, Doc. #1123. Trustee retained a real estate broker in January 2023 to market and sell Property, but the broker has not been successful. Doc. #443. As a result, Movant and Trustee executed the Stipulation. The court notes that the Stipulation was filed as an exhibit to this motion and it has not been separately filed and docketed as a stipulation.

Under the terms of the Stipulation, Movant and Trustee agreed to grant Movant relief from the automatic stay to permit Movant to record a Notice of Default and proceed with its state law remedies. *Ex. A*, Doc. #1123. Trustee shall maintain insurance for the Property for as long as it is being marketed for sale by Trustee. Movant agrees to delay the recording of a Notice of Sale only in the event that Trustee has (1) identified a purchaser for the Property, (2) fully execute a contract of sale for the Property with a sales price in excess of Movant's indebtedness, and (3) an earnest money deposit is in escrow. *Id.* The Stipulation also provides for waiver of the 14-day stay of Rule 4001(a)(3). *Id.* Movant now requests approval of the Stipulation. Doc. #1119.

Under Rule 4001(d)(1)(A)(iii), a party may file a motion for approval of an agreement to modify or terminate the stay provided in § 362. The motion contains the required contents outlined in Rule 4001(d)(1)(B) and was properly served on all creditors as required by Rule 4001(d)(1)(C). Pursuant to Rule 4001(d)(1), (2), and (3), a hearing was set on at least seven days' notice and the parties required to be served (Debtor and Trustee) were given at least 14 days to file objections or may appear to object at the hearing.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED, and the Stipulation approved. The court will also order the 14-day stay of Rule 4001(a)(3) waived because the parties have consented to stay relief.

Any proposed order shall attach the Stipulation as an exhibit. Movant shall also separately file the Stipulation and docket it as a stipulation.

2. [23-10719](#)-B-7 **IN RE: SONIA MALDONADO**
[JES-1](#)

MOTION TO EMPLOY BAIRD AUCTIONS AND APPRAISALS AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
6-14-2023 [[18](#)]

JAMES SALVEN/MV
GRISELDA TORRES/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.

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to (a) employ Baird Auctions & Appraisals ("Auctioneer") under 11 U.S.C. § 328; (b) sell the estate's interest in a 2018 Ford pickup ("Vehicle") at public auction under § 363(b)(1); and (c) compensate Auctioneer under §§ 327(a) and 328. Doc. #18. The auction will be held on or after July 11, 2023 beginning at 5:30 p.m. at Baird Auctions & Appraisals located at 1328 N. Sierra Vista, Suite B, Fresno, California. *Id.*

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

This motion was filed and served on at least 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Fed. R. Bankr. P. ("Rule") 2002(a)(2) and (a)(6) 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.

Employment and Compensation

This motion affects the proposed disposition of estate assets and Auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion to add Auctioneer as a party.

LBR 9014-1(d)(5)(B)(iii) permits joinder of requests for authorization to employ a professional, i.e., auctioneer, for sale of estate property at public auction, and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rules 6004-05.

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 15% commission on the gross proceeds from the sale; and (ii) estimated expenses not to exceed \$500.00 for storage and sale. Doc. #18. In addition to those fees and expenses, Auctioneer charges buyers an additional 10% premium on the purchase price. Docs. ##20-21. The buyer's premium and commission include Auctioneer's necessary expenses, including, but not limited to, marketing and advertising of the property, and other costs of sale. *Id.* Auctioneer holds a Bankruptcy Auctioneer Blanket Bond and carries Liability Insurance Coverage as required by the U.S. Trustee. *Id.*

Trustee and Jeffrey Baird, Auctioneer's owner, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). *Id.* With respect to Debtor, Auctioneer is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the Debtor or an investment banker. *Id.* Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtors, or any other party in interest, and had not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.* Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle. Doc. #20. Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by (1) actively advertising the sale of the property, (2) generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission, and up to \$500.00 for expenses as prayed.

Proposed Sale

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing*

Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Here, Vehicle is listed in the schedules as having 8,635.30 miles and is valued at \$41,699.00. *Am. Sched. A/B*, Doc. #13. Vehicle does not appear to have any encumbrances. *Am. Sched. D*, *id.* Debtor originally claimed a \$7,500.00 exemption in Vehicle pursuant to Cal. Civ. Code § 704.010. *Sched. C*, Doc. #1. However, such exemption was not claimed in the most recent schedules filed. *Cf.* Docs. #13, #16. It is unclear whether Debtor will be paid on account of her original exemption.

If Trustee sells Vehicle at public auction at the scheduled sale price under § 363(b) and Debtor's initial exemption is considered valid, then the proposed sale would be illustrated as follows:

Sale price	\$41,699.00
Auctioneer fees (15%)	- \$6,254.85
Estimated expenses (≤ \$500)	- \$500.00
Debtors' exemption	- \$7,500.00
Estimated net proceeds (≥)	= \$27,444.15

Trustee believes that using the auction process to sell Vehicle will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #20. Based on Trustee's experience, this could yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate such that the sale of the Vehicle would be in the best interests of the estate if it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Conclusion

This matter will be called and proceed as scheduled. In the absence of opposition, this motion will be GRANTED. Trustee will be permitted to employ Auctioneer, sell the Vehicle at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale and payment of up to \$500.00 for expenses.

3. [22-10954](#)-B-7 **IN RE: CHAD GILLIES**
[UST-1](#)

MOTION TO APPROVE STIPULATION TO DISMISS CASE WITHOUT ENTRY
OF DISCHARGE
6-5-2023 [\[57\]](#)

TRACY DAVIS/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
JORGE GAITAN/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 with a copy of the
stipulation attached as an exhibit.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"), moves for an order approving a stipulation with Chad Mitchell Gillies ("Debtor") to dismiss this chapter 7 case without entry of discharge. Docs. ##56-57.

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 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.

Debtor filed chapter 13 bankruptcy on June 2, 2022. Doc. #1. A chapter 13 plan was confirmed on September 9, 2022. Doc. #29. On March 10, 2023, the court converted the case to chapter 7 because Debtor failed to make all payments due under the plan and it appeared that there was \$61,675.59 in equity in real property that could be liquidated for the benefit of creditors and the estate. Docs. ##38-39. However, on April 22, 2023, chapter 7 trustee Jeffrey Vetter ("Trustee") filed a report of no distribution indicating that there were no assets available to disburse to unsecured creditors.

UST is prepared to file a motion to dismiss for abuse under 11 U.S.C. § 707(b)(1) and (b)(3) (bad faith and/or totality of circumstances abuse). However, Debtor does not wish to defend UST's allegations and, through Debtor's attorney, stipulated to dismissal of this bankruptcy without entry of discharge on June 2, 2023. Doc. #56.

A chapter 7 case may be dismissed only after notice and a hearing and only for "cause." 11 U.S.C. § 707(a) provides three statutorily enumerated grounds establishing cause, but these are not exclusive. *Sherman v. SEC (In re Sherman)*, 491 F.3d 948, 970 (9th Cir. 2007); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008). Under 11 U.S.C. § 707(b), an individual chapter 7 consumer debtor's case may be dismissed for presumed abuse or where abuse is demonstrated by bad faith or the totality of the circumstances of the debtor's financial condition. See 11 U.S.C. § 707(b)(1)-(b)(3).

Here, UST is prepared to file a motion to dismiss pursuant to § 707(b)(1) and (b)(3), but Debtor has opted to voluntarily dismiss the case instead. Doc. #56. No creditors timely filed written opposition, and there does not appear to be any benefit to creditors in keeping this case open.

Accordingly, the motion will be GRANTED. The stipulation to dismiss will be approved and the case will be dismissed. The proposed order shall include an attached copy of the stipulation as an exhibit.

4. [23-10981](#)-B-7 **IN RE: ALBERT/SOLVEIG SWAFFORD**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-23-2023 [\[14\]](#)

BANK OF AMERICA, N.A./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
BANK OF AMERICA, N.A. VS.

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.

Specialized Loan Servicing LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to 2802 Sotheby's Court, Bakersfield, California 93311 ("Property"). Doc. #14. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.* Albert Reed Swafford and Solveig Christine Swafford (collectively "Debtors") did not oppose.

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 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.

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 Debtors have failed to make at least 11 complete pre-petition payments. Movant has produced evidence that Debtors are delinquent at least \$53,457.67 and the entire balance of \$997,816.51 is due. Doc. #18.

The court also finds that the Debtors do not have any equity in the Property and the Property is not necessary to an effective reorganization because this is a chapter 7. The Property is valued at \$950,000.00 and Debtors owe \$997,816.51. Doc. #16.

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 Debtors have failed to make at least 11 payments pre-petition to Movant. The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

5. [23-10884](#)-B-7 **IN RE: LANCE KELSEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-25-2023 [\[30\]](#)

\$32.00 FILING FEE PAID 6/5/23

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 \$32.00 filing fee was paid on June 5, 2023. Accordingly, this order to show cause will be VACATED.

6. [23-10884](#)-B-7 **IN RE: LANCE KELSEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-23-2023 [[27](#)]

\$32.00 FILING FEE PAID 6/5/23

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 \$32.00 filing fee was paid on June 5, 2023.
Accordingly, this order to show cause will be VACATED.

11:00 AM

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

CONTINUED FURTHER SCHEDULING CONFERENCE RE: COMPLAINT
2-5-2018 [[1](#)]

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

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

DISPOSITION: Continued to August 9, 2023 at 11:00 a.m.

NO ORDER REQUIRED.

The court is in receipt of the parties' joint status report.
Doc. #284. The court issued an order continuing this further
scheduling conference to August 9, 2023 at 11:00 a.m. Doc. #286.

2. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA NON-PROFIT**
[WJH-2](#) **CORPORATION**

CONTINUED HEARING RE: MOTION TO USE CASH COLLATERAL
6-23-2023 [[18](#)]

TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

3. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA NON-PROFIT CORPORATION**
[WJH-3](#)

CONTINUED MOTION FOR ORDER AUTHORIZING MAINTENANCE OF
EXISTING BANK ACCOUNT
6-23-2023 [[24](#)]

TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

4. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA NON-PROFIT CORPORATION**
[WJH-4](#)

CONTINUED MOTION TO PAY AND/OR MOTION AUTHORIZING AND
DIRECTING THE APPLICABLE BANK TO PAY ALL RELATED CHECKS AND
ELECTRONIC PAYMENTS REQUESTS MADE BY THE DEBTOR RELATING TO
THE FOREGOING.
6-23-2023 [[29](#)]

TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.