



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, July 11, 2024
Department A – 510 19th Street
Bakersfield, California

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

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

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

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

Please also note the following:

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

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

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

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [24-11202](#)-A-13 **IN RE: JACOB/KATHLEEN EYRAUD**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
6-10-2024 [\[15\]](#)

STEVEN ALPERT/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. While not required, the debtors filed a statement of non-opposition on July 5, 2024. Doc. #18. Unless further opposition is presented at the hearing, the court intends to enter the defaults of the non-responding parties and sustain the objection. If further 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.

Jacob Luis Eyraud and Kathleen Marie Eyraud (together "Debtors") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on May 1, 2024. Doc. #1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan on the grounds that: (1) Debtors failed to disclose their ownership of a 2020 GMC Yukon; (2) the Plan provides for payments to creditors for a period longer than 5 years in violation of 11 U.S.C. § 1322(d); and (3) Debtors have not filed all applicable tax returns required by 11 U.S.C. § 1325(a)(9). Doc. #15. The party moving to confirm the chapter 13 plan bears the burden of proof to show facts supporting the proposed plan. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997). Debtors do not oppose the court sustaining Trustee's objection to confirmation. Doc. #18.

11 U.S.C. § 1325(a)(1) requires the Plan to comply with the provisions of this chapter and with the other applicable provisions of this title. 11 U.S.C. § 1325(a)(1). Trustee contends, according to testimony at the meeting of creditors held on June 4, 2024, Debtors failed to disclose their ownership of a 2020 GMC Yukon. Without all the assets listed, Trustee is unable to accurately determine liquidation.

Section 1322(d) of the Bankruptcy Code requires that a plan cannot provide for payments to creditors for longer than 5 years. The Plan currently provides for monthly plan payments of \$6,052.08. Plan, Doc. #3. However, Trustee contends Debtors have failed to provide admissible evidence that the Plan is mathematically feasible. Doc. #15. Trustee's calculations indicate Debtors' plan payment would need to be at least \$6,062.93 per month to be feasible. Id. Trustee is not opposed to resolving the issue in an order confirming plan. Id.

Section 1325(a)(9) of the Bankruptcy Code requires that Debtors have filed all applicable federal, state and local tax returns as required by 11 U.S.C. § 1308. Debtors have not filed their 2021, 2022 and 2023 tax returns before the

meeting of creditors was concluded. Claim 6-1; Doc. #15. Thus, the Plan cannot be confirmed.

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

2. [24-11203](#)-A-13 **IN RE: DAVID TUROWSKI**
[LGT-1](#)

MOTION TO DISMISS CASE
6-12-2024 [[29](#)]

NEIL EVANS/ATTY. FOR DBT.
DISMISSED 6/18/24

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on June 18, 2024. Doc. #36.
Therefore, this motion will be DENIED AS MOOT.

3. [24-10719](#)-A-13 **IN RE: MELINDA JAMES**
[LGT-1](#)

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

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

4. [18-12923](#)-A-13 **IN RE: JESUS/ROCHELLE PORTILLO**
[PK-12](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF PATRICK KAVANAGH FOR
PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
6-13-2024 [[186](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the
hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The
failure of creditors, the U.S. Trustee, or any other party in interest to file

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

Patrick Kavanagh ("Movant"), counsel for Jesus Reynaldo Portillo Jr. and Rochelle Desiree Portillo (together, "Debtors"), the debtors in this chapter 13 case, requests allowance of final compensation in the amount of \$5,100.00 and no reimbursement for expenses for services rendered from November 5, 2021 through the closing of this case. Doc. #186. Debtors' confirmed plan provides for \$9,386.00 in attorney's fees to be paid through the plan in addition to a \$1,114.00 pre-petition retainer. Plan, Doc. #128, 149. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the combined amount of \$8,490.00 and reimbursement for expenses totaling \$405.65. Order, Doc. #140. Debtors consent to the amount requested in Movant's application. Doc. #186.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and filing opposition to a motion to dismiss; (2) preparing and confirming Debtors' fourth modified plan; (3) preparing fee application; and (4) general case administration. Exs. A & B, Doc. #188. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

Accordingly, this motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, in addition to compensation requested by this motion in the amount of \$5,100.00 to be paid in a manner consistent with the terms of the confirmed plan.

MOTION FOR COMPENSATION BY THE LAW OFFICE OF TIMOTHY C. SPRINGER FOR
NANCY D. KLEPAC, DEBTORS ATTORNEY(S)
5-24-2024 [\[136\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

The Law Offices of Timothy C. Springer ("Movant"), counsel for Christopher Andrew Renna ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$11,620.00 for services rendered from May 12, 2022 through May 20, 2024. Doc. #136. Debtor's confirmed plan provides, in addition to \$1,612.00 paid prior to filing the case, for \$13,388.00 in attorney's fees to be paid through the plan. Am. Plan, Doc. ##3, 129. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Doc. #136.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's modified plans; (2) communicating with Debtor's creditors and the chapter 13 trustee; (3) preparing the fee application; and (4) general case administration. Exs. A, B & C, Doc. #138. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$11,620.00 to be paid in a manner consistent with the terms of the confirmed plan.

6. [22-10826](#)-A-13 **IN RE: CHRISTOPHER RENNA**
[TCS-9](#)

MOTION TO MODIFY PLAN
5-24-2024 [[140](#)]

CHRISTOPHER RENNA/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

7. [23-12130](#)-A-13 **IN RE: PAMELA MULLEN**
[RSW-4](#)

MOTION TO CONFIRM PLAN
5-30-2024 [[68](#)]

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The chapter 13 trustee timely opposed this motion but withdrew her opposition on July 3, 2024. Doc. #77. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by

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

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

8. [23-12338](#)-A-13 **IN RE: SALINA THOMAS**
[DHC-4](#)

MOTION TO CONFIRM PLAN
6-7-2024 [[78](#)]

SALINA THOMAS/MV
DAVID CHUNG/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice by mail of this motion was sent on June 7, 2024, with a hearing date set for July 11, 2024. The motion was set for hearing on less than 35 days' notice as required by Local Rule of Practice 3015-1(d)(1). Because the motion was not noticed at least 35 days prior to the hearing date, the motion was not properly noticed and is denied without prejudice.

9. [24-10645](#)-A-13 **IN RE: LINDA ZEPEDA FRIAS**
[LGT-1](#)

MOTION TO DISMISS CASE
5-10-2024 [[21](#)]

DISMISSED 6/18/24

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on June 18, 2024. Doc. #32. Therefore, this motion will be DENIED AS MOOT.

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
6-3-2024 [\[15\]](#)

GREGORY SHANFELD/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Amanda Lynette Logan ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on March 15, 2024. Doc. #1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan on the grounds that: (1) Debtor has failed to provide a Domestic Support Obligation Checklist; and (2) the Plan does not provide for all of Debtor's projected disposable income to be applied to unsecured creditors as required by 11 U.S.C. § 1325(b). Doc. #15. The party moving to confirm the chapter 13 plan bears the burden of proof to show facts supporting the proposed plan. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997).

11 U.S.C. § 1325(a)(1) requires the Plan to comply with the provisions of this chapter and with the other applicable provisions of this title. 11 U.S.C. § 1325(a)(1). Trustee contends Debtor has failed to provide a Domestic Support Obligation Checklist. Doc. #15. Without Debtor's Domestic Support Obligation Checklist, the Trustee is unable to send the required letters to claim holders and/or state agencies. Id.

Upon the objection of the trustee or the holder of an allowed unsecured claim, 11 U.S.C. § 1325(b) requires the plan provide for all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b). Trustee has reviewed Debtor's Form 122C-2 and Debtor has listed housing, utilities and transportation figures that exceed the national standards. Doc. #15. Trustee asserts that until a corrected Form 122C-2 has been received and reviewed, Trustee is unable to determine whether the Plan provides that all of Debtor's projected income will be applied to make payments to unsecured creditors under the Plan. Id.

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

MOTION TO DISMISS CASE
5-10-2024 [\[20\]](#)

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

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

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #20. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) appear at the scheduled § 341 meeting of creditors; (2) provide Trustee with any requested documents; (3) file a complete plan; and (4) accurately file schedules and/or statements. Doc. #20. The debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors because the debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Cause also exists under 11 U.S.C. § 1307(c)(4) to dismiss this case as the debtor has failed to make all payments due under the plan.

Because the debtor has failed to appear at the meeting of creditors, dismissal rather than conversion is appropriate.

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

MOTION FOR HARDSHIP DISCHARGE
6-27-2024 [\[48\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. 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.

Jean Kim ("Movant"), the surviving sibling and substituted successor of deceased chapter 13 debtor Jon Douglas Graves ("Debtor"), moves the court for a hardship discharge pursuant to 11 U.S.C. § 1328(b). Doc. #48.

Debtor filed this chapter 13 case on May 12, 2020. Doc. #1. Pursuant to Debtor's confirmed chapter 13 plan ("Plan"), Debtor was to make monthly plan payments of \$1,170.00 for 60 months. Doc. #2, 15. The Plan provided that general unsecured creditors would receive payment of 67% of their filed and allowed claims. Id.

Debtor died on November 14, 2023. Doc. #39. After Debtor's death, Movant paid the chapter 13 trustee \$14,252.00 from her own funds to meet the requirement that general unsecured creditors would receive payment of 67% of their filed and allowed claims. Decl. of Jean Kim, Doc. #50.

Bankruptcy Code § 1328(b) permits the court to grant a hardship discharge to a debtor who has not completed plan payments if certain requirements are met. The hardship discharge may be granted only if:

- (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
- (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
- (3) modification of the plan under § 1329 of this title is not practicable.

11 U.S.C. § 1328(b)(1)-(3). The debtor bears the burden of proof on all elements of section 1328(b). Roberts v. Boyajian (In re Roberts), 279 F.3d 91,

93 (1st Cir. 2002). The grant or denial of a request for a hardship discharge is within the discretion of the bankruptcy court. Id.

The court finds Movant has satisfied the first condition under § 1328(b). See Doc. #39. Debtor's failure to complete his plan payments is due to circumstances for which Debtor should not justly be held accountable.

The court finds the second condition under § 1328(b) also is met. Pursuant to the order confirming the Plan, the chapter 7 liquidation test required that priority and general unsecured creditors receive a combined total of \$6,337.50. Doc. #15. Movant paid the chapter 13 trustee \$14,252.00 from her own funds to meet the requirement that general unsecured creditors would receive payment of 67% of their filed and allowed claims. Kim Decl., Doc. #50. It appears that the value distributed under Debtor's Plan is not less than the amount that would have been paid on unsecured claims if Debtor's estate been liquidated under chapter 7 of this title on the date that the Plan was confirmed.

Finally, the court finds the third condition under § 1328(b) also is satisfied because modification of Plan is not practicable given Debtor's death.

Because the court finds that Movant has met her burden of proof on all elements of § 1328(b), this motion is GRANTED.

Pursuant to Federal Rule of Bankruptcy Procedure 4007(d), the last day to file a complaint under § 523(a)(6) of the Bankruptcy Code is September 23, 2024. Not later than July 25, 2024, Movant's counsel shall give notice to all creditors and file a proof of service so indicating.

13. [23-12466](#)-A-13 **IN RE: MARIO HUNTER**
[LEL-4](#)

MOTION TO CONFIRM PLAN
5-14-2024 [\[62\]](#)

MARIO HUNTER/MV
ERIKA LUNA/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(1). The chapter 13 trustee ("Trustee") filed an opposition to the debtor's motion to confirm the chapter 13 plan. Doc. #67. Trustee's opposition was withdrawn on June 20, 2024. Doc. #81. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the non-responding parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will

be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

14. [23-12466](#)-A-13 **IN RE: MARIO HUNTER**
[LGT-1](#)

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

ERIKA LUNA/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

On April 29, 2024, the chapter 13 trustee ("Trustee") moved to dismiss under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor has failed to confirm a chapter 13 plan. Doc. #48. The debtor's chapter 13 bankruptcy case was filed on November 1, 2023. Doc. #1.

On May 14, 2024, the debtor filed and served a motion to confirm the debtor's second amended plan and set that motion for hearing on July 11, 2024. Doc. ##61-66. The court has granted that motion by final ruling, calendar matter #13 above.

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). Because confirmation of the debtor's second amended plan satisfies all outstanding grounds for Trustee's motion to dismiss, there is no "cause" for dismissal under 11 U.S.C. § 1307(c)(1), and the motion to dismiss is denied.

Accordingly, unless withdrawn prior to the hearing, this motion will be DENIED.

15. [24-10574](#)-A-13 **IN RE: ANNA NEGRETE**
[LGT-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-23-2024 [\[33\]](#)

LILIAN TSANG/MV
DISMISSED 6/6/24

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on June 6, 2024. Doc. #41. Therefore,
this motion will be OVERRULED AS MOOT.

1. [23-12905](#)-A-7 **IN RE: REZA IMANI**
[KJF-4](#)

OBJECTION TO HOMESTEAD EXEMPTION
5-22-2024 [\[35\]](#)

CREDITORS ADJUSTMENT BUREAU, INC./MV
MATTHEW ABBASI/ATTY. FOR DBT.
MELODY ANDERSON/ATTY. FOR MV.

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

DISPOSITION: Sustained.

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

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

As a procedural matter, the exhibits filed in connection with this motion do not comply with LBR 9004-2(c)(1) and (d)(1), which require declarations and exhibits to be filed as separate documents. The declaration was filed as a single document that included the movant's exhibits. E.g., Doc. ##37, 41. Additionally, the exhibits filed by the movant do not include an exhibit index and have not been properly numbered as required by LBR 9004-2(d)(2) and (d)(3). The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Creditors Adjustment Bureau, Inc. ("Creditor"), a judgment creditor of Reza Imani ("Debtor"), objects to Debtor's claim of an exemption in Debtor's real property located at 2312 Tirol Dr., Pine Mountain Club, Frazier Park, California 93225 (the "Property"). Obj., Doc. #35; see Schedule C, Doc. #1. Debtor claims an automatic homestead exemption of the full value of the Property under California Code of Civil Procedure ("C.C.P.") § 704.730. Schedule C, Doc. #1.

Creditor objects to Debtor's claimed homestead exemption on two grounds: (1) Debtor did not reside in the Property at the time of filing his bankruptcy petition so he cannot claim the Property as his homestead; and (2) Debtor has

not continuously resided in the Property from the date Creditor's judicial lien attached to the Property. Obj., Doc. #35.

Movant requests the court take judicial notice of true and correct copies of the following documents: (1) Abstract of Judgment recorded with the Kern County Recorder on November 11, 2015, as Instrument No. 0215157396 see Ex. 1, Doc. #41; (2) Grant Deed recorded with the Kern County Recorder on August 27, 2004 as Instrument No. 0204208707, see Ex. 2, Doc. #41; (3) Certificate of Occupancy from Kern County Department of Public Works, Building Inspection Division dated June 18, 2018 for 2312 Tirol Dr., Pine Mountain Club, see Ex. 4, Doc. #41; (4) Page 1 of Debtor's Statement of Financial Affairs filed in this case as part of Docket No. 1, see Ex. 5, Doc. #41.

This court may take judicial notice of and consider the records in this bankruptcy case, filings in other court proceedings, and public records. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the existence of exhibits 1 through 4 but does not take judicial notice of the truth or falsity of the contents of any such document for the purpose of making a finding of fact. In re Harmony Holdings, LLC, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008) (collecting cases).

Facts

Debtor filed this chapter 7 bankruptcy case on December 28, 2023. Doc. #1. Prior to the filing date, Creditor obtained a judgment against Debtor in Ventura County Superior Court in the amount of \$251,200.13 ("Judgment") on June 4, 2015. Decl. of Melody G. Anderson, Doc. #41. This Judgment remains unsatisfied with a balance due exceeding \$470,000.00 Id. Creditor recorded an abstract of judgment on November 11, 2015. Ex. 1, Doc. #41. At the time the abstract of judgment was recorded, Debtor owned an interest in the Property, which created a judgment lien on the Property in favor of Creditor. Anderson Decl., Doc. #41; Ex. 2, Doc. #41.

In November 2023, Creditor requested that the Kern County sheriff levy on the Property pursuant to a writ of execution. Anderson Decl., Doc. #41. A required hearing to determine whether or not the Property was subject to a homestead exemption was set for January 2, 2024, but did not go forward due to Debtor's bankruptcy filing. Id. The Property is listed as an asset on Debtor's bankruptcy petition. Schedule A, Doc. #1. Debtor has claimed the full value of the Property as exempt under C.C.P. § 704.730. Schedule C, Doc. #1. The parties agree that the Property is unencumbered except for Creditor's judgment lien. Anderson Decl., Doc. #41.

On May 3, 2024, the court entered an "Order for Oral Examination of Debtor Reza Imani and for Production of Documents pursuant to FRBP 2004[.]" Doc. #26. Creditor conducted Debtor's examination pursuant to Federal Rule of Bankruptcy Procedure 2004 on May 9, 2024 ("2004 Examination"). Anderson Decl., Doc. #41. During the 2004 Examination, Debtor testified that the Property was vacant land when he bought the Property in 2004, and a cabin built on the Property was completed in 2018. Ex. 3, Doc. #41. Debtor produced a Certificate of Occupancy for the Property dated June 18, 2018. Ex. 4, Doc. #41. Additionally, during the 2004 Examination, Debtor testified that, after the cabin was built, Debtor attempted to rent out the Property from August 2018 through November 2018. Ex. 3, Doc. #41. Lastly, Debtor indicated on Debtor's Statement of Financial Affairs that he lived at 1122 6th St., Apt. 402, Santa Monica, California 90404 ("Apartment") from 2018 to 2021. Ex. 5, Doc. #41. However, during the 2004 Examination, Debtor testified that he lived at the Apartment from 2016 to 2018 when he moved to the Property. Ex. 3, Doc. #41.

Upon an "Order for Production of Documents by Custodian of Records of 112 6th Street LLC Pursuant to FRBP 2004" entered on May 9, 2024 and a "Subpoena for Rule 2004 Examination", the deponent objected to the subpoena but produced a copy of the Agreement to Rent or Lease by which Debtor rented the Apartment beginning on May 9, 2015. Doc. #32; Ex. 6, Doc. #41.

Burden of Proof

"[T]he debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure § [704.730] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016) (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, [Fed. R. Bankr. P.] 4003(c) does not change that allocation.").

California's Automatic Homestead Exemption

California has opted out of the federal exemption scheme. C.C.P. § 703.130; Philips v. Gilman (In re Gilman), 887 F.3d 956, 964 (9th Cir. 2018). "As a result, '[t]he bankruptcy court decides the merits of state exemptions, but the validity of the exemption is controlled by California law.'" Gilman, 887 F.3d at 964 (quoting Diaz, 547 B.R. at 334). In considering California's homestead legislation, "the duty of the federal court is to ascertain and apply the existing California law." Klingebiel v. Lockheed Aircraft Corp., 494 F.2d 345, 346 (9th Cir. 1974); see also Fortuna v. Naval Weapons Ctr. Fed. Credit Union (In re La Fortuna), 652 F.2d 842, 846 (9th Cir. 1981). The court is "mindful of the California authorities which admonish that 'the homestead statutes are to be construed liberally on behalf of the homesteader.'" Redwood Empire Prod. Credit Ass'n v. Anderson (In re Anderson), 824 F.2d 754, 759 (9th Cir. 1987) (quoting Ingebretsen v. McNamer, 137 Cal. App. 3d 957, 960 (1982)). "But liberal construction in favor of the debtor does not give us license to rewrite the California legislature's scheme for homestead protection." Id.

The property to which the claimed homestead exemption applies must be a homestead as that term is defined by C.C.P. § 704.710(c). California Code of Civil Procedure section 704.710(c) defines homestead as follows:

"Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead.

C.C.P. § 704.710(c). "This [definition] requires only that the judgment debtor *reside* in the property as his or her principal dwelling at the time the judgment creditor's lien attaches and continuously thereafter until the court determines the dwelling is a homestead." Gilman, 887 F.3d at 965 (quoting Elliott, 523 B.R. at 196) (emphasis in original).

Continuous residency does not require continuous physical occupation of the property. In 1983, C.C.P. § 704.710 was amended to delete the word "actually", which appeared before "resides" or "resided", "to avoid a possible construction that a person temporarily absent (such as a person on vacation or in the hospital) could not claim" the automatic homestead exemption "merely because the person is temporarily absent, even though the dwelling is the person's principal dwelling and residence." 17 Cal. L. Rev. Comm. Reports 854 (1983); Diaz, 547 B.R. at 334; see also Catsiftes v. Catsiftes, 29 Cal. App. 2d 207,

209 (1938) (determining that "it is clearly evident that [the defendant's] intention was to return . . . at some future time" when the husband regained his health); Harper v. Forbes, 15 Cal. 202, 204 (1860) (retaining a homestead requires "that the removal was temporary in its nature, made for a specific purpose, with the intention of reoccupying the premises").

In In re Bhangoo, 634 B.R. 80, 85 (B.A.P. 9th Cir. 2021), objective evidence demonstrated the debtor's lack of intent to return to the property or to maintain it as his principal dwelling. Bhangoo, 634 B.R. at 80. The Ninth Circuit Bankruptcy Appellate Panel court concluded that the debtor did not continuously reside in the property he owned and therefore did not qualify for the homestead exemption under C.C.P. § 704.730. Id.

In SBAM Partners, LLC v. Wang, 164 Cal. App. 4th 903 (2008), SBAM's assignor obtained a judgment against Wang in 1995 and recorded an abstract of judgment in Los Angeles County the same year. SBAM, 164 Cal. App. 4th at 906. In 1997, Wang purchased a condominium in Los Angeles County and lived there continuously thereafter. Id. In 2006, SBAM sought an order for sale of the condominium as a means of enforcing the judgment. Id. Wang opposed the sale claiming a homestead exemption in the condominium. Id. The court held that Wang was not entitled to a homestead exemption because the condominium had become his principal dwelling after the creation of the judgment lien and was not purchased with exempt proceeds from a former property that was covered by the homestead exemption. Id. at 908-913.

Debtor is not entitled California's automatic homestead exemption

Here, Debtor did not reside in the Property at the time Creditor's judgment lien attached in 2015. The Property was a vacant lot until a cabin was built on the Property in 2018. While there are discrepancies as to when Debtor actually moved onto the Property, it is clear that Debtor did not reside on the Property at the time Creditor's lien attached in 2015 or continuously thereafter until at least 2018. It would have been impossible for the Property to be Debtor's principal dwelling at the time Creditor recorded the abstract judgment because a place to reside on the Property had not been built yet. Therefore, because Debtor did not live on the Property at the time Creditor recorded its abstract of judgment in 2015 or continuously thereafter, the Property does not qualify as a homestead under C.C.P. § 704.710(c), and Debtor is not entitled to claim the Property as subject to a homestead exemption under C.C.P. § 704.730.

Accordingly, Creditor's objection to Debtor's claimed homestead exemption in the Property is SUSTAINED.

2. [24-10017](#)-A-7 **IN RE: DANIEL/MADALENA HENSLEY**
[SAD-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-10-2024 [\[40\]](#)

STETSON CAPITAL ADVISORS I, LP/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
SHANNON DOYLE/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

3. [23-11048](#)-A-7 **IN RE: TIMOTHY CRANE**
[ALG-1](#)

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

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

NO RULING.

4. [23-11048](#)-A-7 **IN RE: TIMOTHY CRANE**
[DMG-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH
GARRETT FORRISTAL ET AL.
6-6-2024 [\[79\]](#)

JEFFREY VETTER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

As a procedural matter, the Clerk's Matrix of Creditors used by the moving party to serve the motion does not comply with LBR 7005-1(d), which requires that the Clerk's Matrix of Creditors used to serve a notice be downloaded not more than 7 days prior to the date notice is served. Here, the moving party served notice of the motion on June 6, 2024, using a Clerk's Matrix of Creditors, a Matrix of Registered Users of the Electronic Filing System and a Request for Special Notice Filed list that were each generated on May 23, 2024. Doc. #83. However, based on the Declaration of D. Max Gardner filed on July 10, 2024, when generating a new matrix list, there was no change from the list used to serve the motion on June 6, 2024. Decl. of D. Max Gardner, Doc. #89. The

court has compared the Clerk's Matrix of Creditors generated on May 23, 2024 with the list attached to the certificate of service for the declaration of Mr. Gardner served on July 10, 2024 and confirmed that all parties and addresses are the same. Doc. ##83, 89, 90. Therefore, it appears that the proper parties were timely served with the motion to compromise notwithstanding that the Clerk's Matrix of Creditors was generated more than 7 days before the date the motion was served. Accordingly, the court deems service of this motion to be proper.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Timothy Philip Crane ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of a personal injury lawsuit arising from state court civil litigation against defendant Garrett Foristal et al. (collectively, "Defendant"). Doc. #79.

Debtor filed a chapter 13 bankruptcy case on May 17, 2023. Doc. #1. The bankruptcy case converted from chapter 13 to chapter 7 on September 7, 2023. Doc. #41. Among the assets of the chapter 7 estate is a lawsuit for personal injury against Defendant, Kern County Superior Court Case No. BCV-22-101096 (the "Action"). Decl. of Jeffrey M. Vetter, Doc. #81. The Action has settled for \$1,500,000.00. Ex. A, Doc. #82. Debtor has agreed to pay the Trustee the sum of (not to exceed) \$33,000.00 from the settlement of the Action, which satisfies the following claims: (1) \$18,832.72 to the U.S. Department of Education; (2) \$100.00 to the Internal Revenue; (3) \$5,600.00 in estimated statutory Trustee fees and administrative expenses; and (d) \$5,000.00 in anticipated attorney and/or CPA fees. Vetter Decl., Doc. #81.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #79. Trustee asserts that this compromise results in chapter 7 administration with a 100% distribution to creditors, which is a result that is in the interest of creditors. Vetter Decl., Doc. #81. The settlement represents a sum coming to the chapter 7 estate and the 100% distribution to creditors also eliminates the need for Trustee to object to the exemption of Debtor being claimed in the Action. Id. The court concludes that the Woodson factors balance in favor of approving the compromise of the Action, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is GRANTED, and the settlement between Trustee and Defendant is approved. Trustee is authorized to execute such documents as are necessary to complete the settlement.

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT
SEC. 341(A) MEETING OF CREDITORS
6-7-2024 [\[13\]](#)

DAVID CHUNG/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally denied.

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

The debtor requests that this court deny the motion of the chapter 7 trustee to dismiss this bankruptcy case for the debtor's failure to appear at a continued meeting of creditors on June 7, 2024 because the chapter 7 trustee did not give notice of the continued hearing date to the debtor or the debtor's counsel and did not file a notice of continuance with the court. Doc. #20. The debtor also requests that the time prescribed in Federal Rules of Bankruptcy Procedure 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or file motions for abuse, other than presumed abuse, under 11 U.S.C. § 707, not be extended as requested by the chapter 7 trustee. Doc. #20.

However, the court's docket indicates that the meeting of creditors held on May 24, 2024 was continued to June 7, 2024 at 1:30 p.m. See court docket entry entered on May 30, 2024. Based on the public notice of the continued meeting of creditors on the court's docket, the court denies the debtor's request to deny the motion to dismiss. Instead, the chapter 7 trustee's motion to dismiss is **CONDITIONALLY DENIED**. The debtor shall attend the meeting of creditors rescheduled for July 12, 2024 at 11:00 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

Because the court's docket indicates that the meeting of creditors held on May 24, 2024 was continued to June 7, 2024 at 1:30 p.m., the court also denies the debtor's request not to extend the time prescribed in Federal Rules of Bankruptcy Procedure 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or file motions for abuse, other than presumed abuse, under 11 U.S.C. § 707. Those deadlines are extended to 60 days after the conclusion of the meeting of creditors.

6. [23-11771](#)-A-7 **IN RE: PARADIGM STEEL FABRICATORS INC.**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-7-2024 [\[66\]](#)

D. GARDNER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

This matter will proceed as scheduled. On May 24, 2024, Jeffrey M. Vetter, chapter 7 trustee, requested certified copies of docket number 63. On May 28, 2024, the court issued a notice of payment due in the amount of \$16.00 for certification fees. Doc. #64. If the fees due have not been paid prior to the hearing, sanctions may be imposed on Mr. Vetter.

7. [23-10074](#)-A-7 **IN RE: STEVEN GREGORY**
[JMV-2](#)

MOTION TO SELL
6-18-2024 [\[29\]](#)

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on July 6, 2024. Doc. #34.

8. [24-10299](#)-A-7 **IN RE: ALAN BANKS**
[CLB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-10-2024 [\[13\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV
D. GARDNER/ATTY. FOR DBT.
CHAD BUTLER/ATTY. FOR MV.
DISCHARGED 5/28/24

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

DISPOSITION: Granted in part and denied as moot in part.

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

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

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on May 28, 2024. Doc. #20. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, U.S. Bank National Association ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2022 Forest River Shockwave 24RQMX (the "Vehicle"). Doc. #13.

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 any 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 the debtor has failed to make at least four complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$3,552.62, including late charges of \$1,551.02. Declaration of Erica Choie, Doc. #17.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at \$50,000.00 and the amount owed to Movant is \$50,144.67. Choie Decl., Doc. #17. The debtor's statement of intention indicates that the debtor intends to surrender the Vehicle. Doc. #1.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least four pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

10:30 AM

1. [22-12016](#)-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
11-28-2022 [[1](#)]

D. GARDNER/ATTY. FOR DBT.

NO RULING.

2. [23-12784](#)-A-11 **IN RE: KODIAK TRUCKING INC.**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-25-2024 [[283](#)]

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

Based on the court's docket, it appears that the same motion was inadvertently filed twice. See Doc. ##256, 261. The moving party paid the required filing fee with respect to the second motion and withdrew the first motion. See court docket entry entered on June 12, 2024; Doc. #287. Because the moving party inadvertently filed the same motion twice and paid the filing fee for one of the motions, the court vacates this order to show cause.

11:00 AM

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

STATUS CONFERENCE RE: COMPLAINT
4-23-2024 [[1](#)]

CREDITORS ADJUSTMENT BUREAU, INC. V. IMANI
MELODY ANDERSON/ATTY. FOR PL.

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

DISPOSITION: Continued September 5, 2024 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status report filed on July 1, 2024 (Doc. #27), the status conference will be continued to September 5, 2024 at 11:00 a.m.

The parties shall comply with the requirements in the order to confer (Doc. #5) based on the new status conference date.

2. [22-11042](#)-A-7 **IN RE: TIFFINI HUGHES**
[22-1019](#)

PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
2-9-2023 [[37](#)]

LABOR COMMISSIONER OF THE STATE OF CALIFORNIA V. HUGHES
EDELMIRA DIAZ-WEAVER/ATTY. FOR PL.

NO RULING.

3. [22-11042](#)-A-7 **IN RE: TIFFINI HUGHES**
[22-1019](#) [LCO-6](#)

MOTION IN LIMINE TO ALLOW REMOTE TESTIMONY OF WITNESSES DURING TRIAL
6-13-2024 [[72](#)]

LABOR COMMISSIONER OF THE STATE OF CALIFORNIA V. HUGHES
EDELMIRA DIAZ-WEAVER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the defendant or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-

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

Labor Commissioner of the State of California ("Plaintiff") moves in limine to allow remote testimony of witnesses during trial against Tiffani R. Hughes pursuant Federal Rule of Civil Procedure ("Rule") 43 and Federal Rule of Bankruptcy Procedure 9017. Doc. #72. No opposition has been filed.

"Although the Federal Rules of Evidence do not explicitly authorize *in limine* rulings, the practice has developed pursuant to the [trial] court's inherent authority to manage the course of trials." Luce v. United States, 469 U.S. 38, n.4 (1984) (italics in original). Judges have broad discretion when ruling on motions in limine, but in order to exclude evidence on a motion in limine "the evidence must be inadmissible on all potential grounds." E.g., Mitchell v. Rosario, No. 2:09-cv-03012-RCJ, 2015 U.S. Dist. LEXIS 148381, at *5 (E.D. Cal. Oct. 30, 2015).

Rule 43(a) reads as follows:

(a) In Open Court. At trial, the witnesses' testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

Fed. R. Civ. P. 43(a). Video conferencing software has been shown to be reliable and to provide the appropriate safeguards required by Rule 43. See, Gould Electronics Inc. v. Livingston County Road Commission, 470 F. Supp.3d 735, 739 (2020), citing Aoki v. Gilbert, 2019 WL 1243719, at *1 (E.D. Cal. 2019) ("Because a witness testifying by video is observed directly with little, if any delay in transmission ... courts have found that video testimony can sufficiently enable cross-examination and credibility determinations, as well as preserve the overall integrity of the proceedings."). Accordingly, testimony by videoconference can satisfy the functional goals that Rule 43(a) was designed to achieve. Id.

Plaintiff requests the following witnesses to be allowed to appear remotely:

- (1) Ramona Buchanan ("Buchanan"): Buchanan currently resides in Hawaii, is chronically ill, and is disabled. Decl. of Edelmira Diaz-Weaver, Doc. #75. Further, Buchanan is approximately 80 years old and is unable to travel due to her age and health conditions. Id.
- (2) Emily Ortega ("Ortega"): Ortega currently resides in Texas and has young children. Id. Ortega's family obligations prevent her from traveling. Id.
- (3) Perla Abaya ("Abaya"): Abaya is currently in the Philippines and does not have an anticipated return date. Id. Abaya is about 80 years old and travel does not come easy. Id. Further, Abaya does not work so she does not have the finances to travel to the United States for a few days. Id.

- (4) Lacy Jimenez ("Jimenez"): Jimenez currently resides in Tehachapi, California and has family obligations and financial hardships that prevent her from traveling the 150 miles one-way to Fresno. Id.
- (5) All witnesses in located in Tehachapi, California: The remaining witnesses currently reside in Tehachapi, are not high-income earners and still work as residential caregivers for the elderly. Id. Having to travel to Fresno would also create a financial hardship. Id. Further, Tehachapi is 150 miles from Fresno, which is beyond the 100-mile radius of the court's subpoena power. Id.

Plaintiff is requesting all witnesses listed above be permitted to testify remotely because they are important non-party witnesses and making these non-party witnesses travel to the Fresno courthouse will create a financial burden. Diaz-Weaver Decl., Doc. #75. However, each witness is willing and able to testify remotely. No opposition to allow these non-party witnesses to testify remotely has been filed.

Accordingly, Plaintiff's Motion in Limine is GRANTED to allow the remote testimony during trial of witnesses Ramona Buchanan, Emily Ortega, Perla Abaya, Lacy Jimenez and all witnesses located in Tehachapi, California.

4. [22-11042](#)-A-7 **IN RE: TIFFINI HUGHES**
[22-1019](#) [LCO-7](#)

MOTION IN LIMINE TO ADMIT PRIOR STATEMENTS OF UNAVAILABLE WITNESSES AND
THE CITATION APPEAL AND WAGE HEARING TRANSCRIPTS DURING TRIAL
6-13-2024 [\[78\]](#)

LABOR COMMISSIONER OF THE STATE OF CALIFORNIA V. HUGHES
EDELMIRA DIAZ-WEAVER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and 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.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the defendant or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the non-responding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here in part.

Labor Commissioner of the State of California ("Plaintiff") moves in limine to admit prior statements of unavailable witnesses and the citation appeal and wage hearing transcripts during trial against Tiffani R. Hughes pursuant

Federal Rules of Evidence 804(b)(1) and 807.¹ Doc. #78. No opposition has been filed.

"Although the Federal Rules of Evidence do not explicitly authorize *in limine* rulings, the practice has developed pursuant to the [trial] court's inherent authority to manage the course of trials." Luce v. United States, 469 U.S. 38, n.4 (1984) (italics in original). Judges have broad discretion when ruling on motions in limine, but in order to exclude evidence on a motion in limine "the evidence must be inadmissible on all potential grounds." E.g., Mitchell v. Rosario, No. 2:09-cv-03012-RCJ, 2015 U.S. Dist. LEXIS 148381, at *5 (E.D. Cal. Oct. 30, 2015).

Plaintiff requested the following witnesses to be allowed to appear remotely in a separate motion in limine (LCO-6): (1) Ramona Buchanan; (2) Emily Ortega; (3) Perla Abaya; (4) Lacy Jimenez; and (5) all witnesses located in Tehachapi, California (together, "Remote Witnesses"). The court has granted that motion by final ruling. See calendar matter #3 above. Therefore, Plaintiff's request to admit the Remote Witnesses' prior testimony is moot. To the extent Plaintiff requests the court admit the Remote Witnesses' former testimony in case the Remote Witnesses fail to voluntarily appear, this request is premature and is denied without prejudice to being raised later should such witness(es) not appear voluntarily.

With respect to the remainder of the motion, Plaintiff seeks to submit two sets of prior testimony including (1) transcripts of hearings conducted during the adjudication of the BOFE (workforce-wide) citation, and (2) transcripts of hearings conducted as part of five workers' individual wage claim cases. Exs. B-K, Doc. ##82-85.

Plaintiff asserts that she cannot locate Paula Lauron and Eddie Orona² (together, "Unavailable Witnesses") who testified in an earlier proceeding. Doc. #78. The motion is unclear as to which remaining witnesses are not Remote Witnesses. In regard to the former testimony of the Unavailable Witnesses, former testimony may not be excluded by the rule against hearsay if the former testimony is "[t]estimony that (A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and (B) is now offered against a party who had - or, in a civil case, whose predecessor in interest had - an opportunity and similar motive to develop it by direct, cross-, or redirect examination." Fed. R. Evid. 804(b)(1).

Despite reasonable efforts, the Unavailable Witnesses cannot be located. Decl. of Edelmira Diaz-Weaver, Doc. #80. However, in the earlier proceeding, Debtor along with counsel had an opportunity to cross-examine the Unavailable Witnesses. Ex. C, Doc. #82; Ex. E, Doc. #83. Further, while the legal issues in

¹ The motion states that Plaintiff moves in limine to admit prior statements of unavailable witnesses and the citation appeal and wage hearing transcripts during trial pursuant to Federal Rules of Civil Procedure 803(b)(1), 803(b)(a) or 807. Doc. #78. However, based on the relief sought and the substance of the rules referred to in the motion, the court assumes the Plaintiff incorrectly cites to the Federal Rules of Civil Procedure and meant to cite to Federal Rules of Evidence 804(b)(1) and 807.

² While the Declaration of Edelmira Diaz-Weaver in support of this motion indicates that Plaintiff is not able to locate Rochelin Halprin, Paula Lauron, and Eddie Orona, Doc. #80 at ¶ 33, the motion itself only names Paula Lauron and Eddie Orona as being unable to be located. Doc. #78. Because the motion only names Paula Lauron and Eddie Orona as the "Unavailable Witnesses" whose statements Plaintiff seeks to admit, that is the only relief the court will consider.

these prior proceedings are not identical to those in the present case, certain key factual disputes are nearly identical such as Debtor's liability for wage debts of her incorporated business and the former employee's experience about past pay issues. Doc. #78. Therefore, the Unavailable Witnesses' testimony can be admitted pursuant to Federal Rule of Evidence 804(b)(1). Any request for alternate relief under Federal Rule of Evidence 807 is moot.

Accordingly, Plaintiff's Motion in Limine to admit the former testimony of unavailable witnesses Paula Lauron and Eddie Orona is GRANTED. Plaintiff's Motion in Limine to admit the former testimony of all other witnesses is DENIED.

5. [20-13451](#)-A-7 **IN RE: AMANDEEP SINGH**
[21-1004](#)

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

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

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

DISPOSITION: Continued September 5, 2024 at 11:00 a.m.

ORDER: The court will issue an order.

Based on the final ruling on the plaintiff's motion to strike and enter default judgment that was set for hearing on July 10, 2024, the status conference will be continued to September 5, 2024 at 11:00 a.m.

The plaintiff shall file and serve a status report on or before August 29, 2024 if a default judgment has not been entered in this adversary proceeding by that date.