



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, July 20, 2023  
Department A – Courtroom #11  
Fresno, California**

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## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [22-11707](#)-A-13     **IN RE: JUAN MARTINEZ AND CONSUELO DE MARTINEZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
6-16-2023    [\[48\]](#)

PETER BUNTING/ATTY. FOR DBT.  
DISMISSED 7/5/23

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 July 5, 2023. Doc. #58. Therefore, this motion will be DENIED AS MOOT.

2. [22-10909](#)-A-13     **IN RE: JASON ATHERTON AND GENZZIA DOVIGI-ATHERTON**  
[TCS-4](#)

MOTION TO MODIFY PLAN  
6-6-2023    [\[71\]](#)

GENZZIA DOVIGI-ATHERTON/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

This matter is DENIED AS MOOT.

The debtors filed a second modified plan on July 1, 2023 (TCS-5, Doc. #87), with a motion to confirm the second modified plan set for hearing on August 17, 2023, at 9:30 a.m. Doc. ##85-91. The filing of a second modified plan renders a first modified plan moot.

Accordingly, this matter is DENIED AS MOOT.

3. [23-10010](#)-A-13     **IN RE: PARMINDER SINGH AND RANJIT KAUR**  
[APN-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON  
2-15-2023    [\[27\]](#)

THE BANK OF NEW YORK MELLON/MV  
JERRY LOWE/ATTY. FOR DBT.  
AUSTIN NAGEL/ATTY. FOR MV.

NO RULING.

Counsel for The Bank of New York Mellon f/k/a The Bank of New York as Indenture trustee for CWHEQ Revolving Home Equity Loan Trust, Series 2006-I shall appear at the hearing either telephonically, by Zoom video or audio, or in person to explain to the court why the objection to confirmation has not been withdrawn pursuant to the Stipulation to Resolve Objection filed on June 7, 2023 (Doc. #52).

4. [23-10819](#)-A-13     **IN RE: JUAN BERBER RAMIREZ AND YUDIANA HERNANDEZ BERBER**  
[PBB-3](#)

MOTION TO CONFIRM PLAN  
5-30-2023    [\[41\]](#)

YUDIANA HERNANDEZ BERBER/MV  
PETER BUNTING/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 as required by Local Rule of Practice ("LBR") 3015-1(d)(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.

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the movant checked boxes 6B2 and 6B2a, indicating that service was effectuated by U.S. Mail on all parties in interest using a copy of the Clerk's Matrix of Creditors, but failed to check box 6B: Rule 5 and Rules 7005, 9036 Service. Doc. #47.

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.

5. [23-10819](#)-A-13      **IN RE: JUAN BERBER RAMIREZ AND YUDIANA HERNANDEZ BERBER**  
[SKI-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-6-2023    [\[48\]](#)

TD BANK, N.A./MV  
PETER BUNTING/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.  
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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). On June 21, 2023, the debtors filed a non-opposition to the motion. Doc. #58. 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 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.

The movant, TD Bank, N.A., successor in interest to TD Auto Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to the repossession and sale of a 2015 Audi A4, VIN WAUEFAFL2FN003213 (the "Vehicle"). Doc. #48.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors are in default under their contract by not tendering four payments owed to Movant from February 25, 2023 through May 25, 2023. Decl. of Brenee' Johnson at ¶ 7, Doc. #51. Movant has produced evidence that the debtors are delinquent by \$2,245.32, including late fees of \$54.76. Johnson Decl. at ¶ 7, Doc. #51. The last payment received from the debtors was on February 6, 2023, and was applied to the payment due on January 25, 2023. Id.; Ex. E, Doc. #52.

In addition, in matter #4 above (PBB-3), the court has confirmed the debtors' First Modified Chapter 13 Plan ("Plan") that surrenders the Vehicle. Plan, Doc. #43. Granting relief from the automatic stay allows Movant to retake possession of the Vehicle as intended by the debtors' Plan. Also, the debtors do not oppose the relief requested and will contact Movant to make arrangements for the surrender of the Vehicle. Doc. #58.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to repossess and sell the Vehicle pursuant to applicable law and to use the proceeds from the sale 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 debtors' Plan provides for surrender of the Vehicle and the debtors have no opposition to the granting of this motion.

6. [23-10232](#)-A-13     **IN RE: SHAUN SESTINI**  
[DK-3](#)

OBJECTION TO CLAIM OF U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,  
CLAIM NUMBER 1  
5-19-2023    [\[35\]](#)

SHAUN SESTINI/MV  
DANIEL KING/ATTY. FOR DBT.

NO RULING.

7. [23-10732](#)-A-13     **IN RE: JUAN SANDOVAL**  
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
6-5-2023    [\[33\]](#)

MICHAEL MEYER/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 objection was set for hearing on 28 days' notice 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 moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to the exemptions claimed by Juan Sandoval ("Debtor"), the chapter 13 debtor in this case, because Debtor's exemptions in "Horse Ranch" for \$1,500,000.00 and "Restaurant" for \$200,000.00 are done without electing a specific state law that allows the exemption. Doc. #33; Schedule C, Doc. #18. Furthermore, Trustee contends that under the California exemption statutes, there are no exemptions that would allow Debtor to exempt a "Horse Ranch" in the amount of \$1,500,000.00 or "Restaurant" in the amount of \$200,000.00. Doc. #33. Debtor did not oppose.

California has opted out of the federal system and the validity of exemptions are controlled by California law. Cal. Civ. Proc. Code § 703.130; In re Gilman, 887 F.3d 956, 964 (9th Cir. 2018); Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). "A California debtor in bankruptcy must elect between two sets of exemptions under California law, one which applies to debtors generally and the other which applies to debtors in bankruptcy." Wolfson v. Watts (In re Watts), 298 F.3d 1077, 1080 (9th Cir. 2002); C.C.P. § 703.140(a).

The court finds that Debtor has failed to elect between two sets of exemptions under California law to exempt the Horse Ranch and Restaurant as required. Accordingly, Trustee's objection to Debtor's claimed exemptions will be SUSTAINED.

8. [23-10732](#)-A-13      **IN RE: JUAN SANDOVAL**  
[MHM-3](#)

MOTION TO DISMISS CASE  
6-21-2023    [\[48\]](#)

NO RULING.

9. [22-11635](#)-A-13      **IN RE: EMELITA BROWN**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
12-23-2022    [\[29\]](#)

MICHAEL MEYER/MV  
JOSHUA STERNBERG/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 December 23, 2022, the chapter 13 trustee ("Trustee") moved to dismiss under 11 U.S.C. § 1307(c)(1) for unreasonable delay that is prejudicial to creditors and failure to confirm a plan. Doc. #29. The debtor responded on January 9, 2023, stating that the debtor filed and served a confirmable plan. Doc. #42.

Trustee replied on January 25, 2023, stating that the debtor will not be able to make all payments under the plan and comply with the plan pursuant to 11 U.S.C. § 1325(a)(6). Doc. #44.

On June 14, 2023, the debtor filed and served a motion to confirm the debtor's fifth modified plan and set that motion for hearing on July 20, 2023. Doc. ##126-131. That motion has been granted by final ruling, matter #10 below.

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). It appears that confirmation of the debtor's fifth modified plan satisfies all outstanding grounds for Trustee's motion to dismiss, so there is no "cause" for dismissal under 11 U.S.C. § 1307(c)(1) or (c)(6).

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

10. [22-11635](#)-A-13     **IN RE: EMELITA BROWN**  
[SLG-4](#)

MOTION TO CONFIRM PLAN  
6-14-2023    [[126](#)]

EMELITA BROWN/MV  
JOSHUA STERNBERG/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 as required by Local Rule of Practice ("LBR") 3015-1(d)(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 movants have 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.



OBJECTION TO CONFIRMATION OF PLAN BY BANAMEX USA  
6-7-2023    [\[22\]](#)

BANAMEX USA/MV  
JENNIFER WONG/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                   Sustained.

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

This objection to confirmation 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.

Angel Fernandez ("Debtor") filed a voluntary petition under chapter 13 on April 26, 2023. Doc. #1. On May 9, 2023, Debtor filed a chapter 13 plan ("Plan"). Doc. #15. Banamex USA FKA Citibank, by and through its servicing agent Bank of America, N.A. ("Creditor"), objects to confirmation of the Plan because the Plan (1) does not cure pre-petition arrearages owed to Creditor, (2) does not make ongoing monthly payments to Creditor pursuant to a Note and Deed of Trust, and (3) is not feasible. Obj., Doc. #22.

Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6). 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).

Creditor asserts Creditor is entitled to received payments pursuant to a Promissory Note which matures on February 1, 2026 and is secured by a Deed of Trust on the property commonly known as 1226 Amelia Ave, Hanford, California 93230-2704 (the "Property"). Doc. #22. As of April 26, 2023, the amount in default was \$44,014.05. Claim 3.

The Plan is blank with no proposed payment terms or other provisions. Plan, Doc. #15. Debtor does not appear to have any income to fund the Plan or cure the arrears within 60 months. Schedule I, Doc. #16.

Creditor contends that the proposed Plan is vague and unclear as to Debtor's intention regarding the Property, and the court agrees. To cure pre-petition arrearages of \$44,014.05 within 60 months, Creditor must receive a minimum payment of \$733.57 per month from Debtor through the Plan. Obj., Doc. #22. Creditor also requests attorneys' fees in this motion. Id.

The court finds that the blank Plan without proposed payment terms, Debtor's lack of income, and Debtor's failure to demonstrate an ability to pay the arrearages owed to Creditor or fund the Plan render the Plan unfeasible. The

court will not award attorneys' fees because Creditor has not provided the nature of the claim for attorneys' fees here.

Accordingly, pending any opposition at the hearing, the objection to confirmation of the Plan will be SUSTAINED. The court will not award attorneys' fees.

12. [23-10843](#)-A-13     **IN RE: ANGEL FERNANDEZ**  
[JCW-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE LLC  
6-20-2023    [\[26\]](#)

NATIONSTAR MORTGAGE LLC/MV  
JENNIFER WONG/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Sustained.

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

This objection to confirmation 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.

Angel Fernandez ("Debtor") filed a voluntary petition under chapter 13 on April 26, 2023. Doc. #1. On May 9, 2023, Debtor filed a chapter 13 plan ("Plan"). Doc. #15. Nationstar Mortgage LLC, its assignees and/or successors ("Creditor"), objects to confirmation of the Plan because the Plan (1) does not cure pre-petition arrearages owed to Creditor, (2) does not make ongoing monthly payments to Creditor pursuant to a Note and Deed of Trust, and (3) is not feasible. Obj., Doc. #26.

Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6). 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).

Creditor asserts that Creditor is entitled to received payments pursuant to a Promissory Note which matures on February 2, 2054 and is secured by a first Deed of Trust on the property commonly known as 1226 Amelia Ave, Hanford, California 93230-2704 (the "Property"). Doc. #26. As of April 26, 2023, the approximate amount in default was \$716.97. Claim 6.

The Plan is blank with no proposed payment terms or other provisions. Plan, Doc. #15. Debtor does not appear to have any income to fund the Plan or cure the arrears within 60 months. Schedule I, Doc. #16.

Creditor contends that the proposed Plan is vague and unclear as to Debtor's intention regarding the Property, and the court agrees. To cure pre-petition arrearages of \$716.97 within 60 months, Creditor must receive a minimum payment of \$11.95 per month. Obj., Doc. #22. Creditor also requests attorneys' fees in this motion. Id.

The court finds that the blank Plan without proposed payment terms, Debtor's lack of income, and Debtor's failure to demonstrate an ability to pay the arrearages owed to Creditor or fund the Plan render the Plan unfeasible. The court will not award attorneys' fees because Creditor has not provided the nature of the claim for attorneys' fees here.

Accordingly, pending any opposition at the hearing, the objection to confirmation of the Plan will be SUSTAINED. The court will not award attorneys' fees.

13. [23-10845](#)-A-13      **IN RE: CHRISTOPHER LA FLAMME**  
[MHM-1](#)

MOTION TO DISMISS CASE  
6-15-2023    [\[24\]](#)

MICHAEL MEYER/MV  
STEVEN ALPERT/ATTY. FOR DBT.

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 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 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 ("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. #24. 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; and (3) make all payments due under the plan. Id. 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 the 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.

14. [23-10947](#)-A-13     **IN RE: SONIA LOPEZ**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
6-5-2023    [[23](#)]

MICHAEL MEYER/MV  
SUSAN SILVEIRA/ATTY. FOR DBT.

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

DISPOSITION:     Overruled as moot.

ORDER:             The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed an amended Schedule C on June 8, 2023. Am. Schedule C, Doc. #26.

Accordingly, this objection is OVERRULED AS MOOT.

15. [22-10749](#)-A-13     **IN RE: MIGTERRY SOLINAP**  
[MHM-1](#)

MOTION TO DISMISS CASE  
6-16-2023    [[30](#)]

JONATHAN VAKNIN/ATTY. FOR DBT.  
DISMISSED 7/5/23

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 July 5, 2023. Doc. #35. Therefore, this motion will be DENIED AS MOOT.

16. [23-10549](#)-A-13     **IN RE: YESENIA MADRIGAL**  
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
5-9-2023    [\[23\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection to confirmation of the debtor's plan on July 7, 2023. Doc. ##68, 69.

17. [23-10755](#)-A-13     **IN RE: MICHAEL/CYNTHIA LOMONACO**  
[PBB-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.  
5-26-2023    [\[28\]](#)

CYNTHIA LOMONACO/MV  
PETER BUNTING/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.

Michael Peter Lomonaco and Cynthia Diane Lomonaco (collectively, "Debtors"), the debtors in this chapter 13 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Capital One Bank (USA), N.A. and its successor in interest Capital One, N.A. ("Creditor") on the residential real property commonly referred to as 2505 North Adoline Ave., Fresno, California 93705 (the "Property"). Doc. #28; Schedules A/B and D, Doc. #10.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed the bankruptcy petition on April 14, 2023. Doc. #1. A judgment was entered against Michael Peter Lomonaco in the amount of \$6,641.34 in favor of Creditor on April 26, 2021. Ex. D, Doc. #31. The abstract judgment was recorded pre-petition in Fresno County on May 12, 2021, as document number 2021-0078142. Id. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors estimate the judicial lien to be \$7,379.27 as of May 26, 2023. Doc. #28. The Property also is encumbered by a lien in favor of J Enterprises Inc. in the amount \$122,287.30. Schedule D, Doc. #10. Debtors claim an exemption of \$340,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #10. Debtors assert a market value for the Property as of the petition date at \$354,000.00. Schedule A/B, Doc. #10.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$7,379.27
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$122,287.30
Amount of Debtor's claim of exemption in the Property	+	\$340,000.00
		\$469,666.57
Value of Debtor's interest in the Property absent liens	-	\$354,000.00
Amount Creditor's lien impairs Debtor's exemption		\$115,666.57

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

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

18. [23-10066](#)-A-13 **IN RE: MARIA HERNANDEZ VILLA**  
[MHM-3](#)

MOTION TO DISMISS CASE  
6-21-2023 [\[39\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue the 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 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 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 ("Trustee") asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because the debtor has failed to make all payments due under the plan (11 U.S.C. § 1307(c)(4)). Doc. #39. The debtor is delinquent in the amount of \$2,710.00. Id. Before this hearing, another payment in that same amount will also come due. Id. 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 the debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to timely make payments due under the plan.

A review of the debtor's Schedules A/B, C, and D shows that the debtor claims exemptions in all assets to the extent of their value after accounting for secured claims against the assets. Doc. #15. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

Accordingly, this motion will be GRANTED. The case will be dismissed.

19. [23-11094](#)-A-13      **IN RE: RICHARD GOMEZ**  
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
6-15-2023    [\[19\]](#)

MICHAEL MEYER/MV  
SUSAN SILVEIRA/ATTY. FOR DBT.

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

DISPOSITION:      Overruled as moot.

ORDER:              The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed an amended Schedule C on July 10, 2023. Am. Schedule C, Doc. #29.



Accordingly, this objection is OVERRULED AS MOOT.

20. [23-11094](#)-A-13     **IN RE: RICHARD GOMEZ**  
[USA-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY UNITED STATES DEPARTMENT OF  
DEPARTMENT OF AGRICULTURE  
7-5-2023    [\[26\]](#)

UNITED STATES DEPARTMENT OF AGRICULTURE/MV  
SUSAN SILVEIRA/ATTY. FOR DBT.  
JEFFREY LODGE/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Sustained.

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

This objection to confirmation 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.

As an informative matter, the certificate of service filed in connection with the notice of hearing (Doc. #28) was filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) instead of being printed prior to filing with the court. The version that was filed with the court can be altered because it is still the fillable version. In the future, the declarant should print the completed certificate of service form prior to filing and not file the fillable version.

On April 12, 2023, Richard Gomez ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan"). Doc. ##1, 7. The United States, on behalf of its agency, the Rural Housing Service, a secured creditor ("USDA"), objects to confirmation of the Plan because (1) the Plan does not meet the requirements of 11 U.S.C. § 1322, and (2) the Plan is not feasible under 11 U.S.C. § 1325(a)(6). Doc. #26. Alternatively, USDA requests the case be dismissed or converted to chapter 7 pursuant to 11 U.S.C. § 1307 because Debtor has failed to provide his 2021 tax returns and the lack of a feasible plan causes unreasonable delay to creditors. Id.

Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6). In addition, section 1322(a)(2) of the Bankruptcy Code requires a chapter 13 plan to provide for the payment in full of all claims entitled to priority under 11 U.S.C. § 507 unless the holder of a particular claim agrees to a different treatment. 11 U.S.C. § 1322(a)(2). 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).



The Plan calls for monthly payments of \$1,557.00 for 60 months. Plan, Doc. #7. USDA's claim is classified as a Class 1 claim. Id. Section 3.07 of the Plan proposes to pay the USDA a monthly amount of \$1,150.00 as its post-petition monthly payment and that the USDA will retain its lien. Id. Further, the Plan proposes that arrearages in the estimated amount of \$89,000.00 will be paid without interest. Id. In addition, the Plan contains nonstandard provisions concerning mortgage arrearages totaling \$89,000.00 provided for in Class 1 of the Plan. Id. The nonstandard provisions state that rather than making monthly payments on the arrearages, Debtor will pay the arrearages from one or more of the following methods: seeking assistance from a California homeowner relief program, obtaining title to two vehicles previously owned by his deceased father and selling them, or selling or refinancing the real property located at 1511 Martinez Street, Orange Cove, California (the "Property"). Plan § 7.02, Doc. #7.

USDA contends that the nonstandard provisions are speculative and vague as to the timing of the actions, and the court agrees. Debtor's Plan is dependent upon the sale of assets, refinancing, or assistance from a homeowner relief program without any demonstration that any of these events are likely to occur or that Debtor will be able to make such payments and comply with the Plan, as required by 11 U.S.C. § 1325(a)(6). Doc. #26. Debtor indicates in Section 7.02 of his Plan that Debtor does not have title to the vehicles Debtor proposes to sell nor does Debtor have marketable title to the Property, which Debtor states he has inherited from his father, Jesus Gomez, and which secures the loan. Plan, Doc. #7. USDA argues that in order to obtain marketable title, Debtor presumably will have to obtain an order from a probate court or some other process by which Debtor's ownership of the Property can be confirmed by a document suitable for recording a transfer of title. Doc. #26. Debtor presents no evidence that any proceeding has commenced to administer the estate of Debtor's father. Id. Moreover, until such time that Jesus Gomez's probate estate has been administered, it is unclear whether there will be any other claims to Jesus Gomez's assets, or if there are other debts to be charged against them. Id.

Additionally, Debtor provides no evidence demonstrating (1) whether Debtor will be eligible for any homeowner assistance program, or how long such a process might require, (2) whether Debtor will be able to obtain, or is currently seeking, a loan modification, and (3) an ability or plan to market and sell the vehicles or the Property to satisfy the Class 1 claim. See In re Hogue, 78 B.R. 867, 872-73 (Bankr. S.D. Ohio 1987) ("Bankruptcy courts have consistently denied confirmation of Chapter 13 plans containing such speculative contingencies.").

The court finds that the ambiguities in the nonstandard provisions and Debtor's failure to demonstrate an ability to comply with the nonstandard provisions render the Plan unfeasible.

To the extent that Movant seeks dismissal or conversion of Debtor's bankruptcy case pursuant to 11 U.S.C. § 1307, such relief needs to be requested by a separate motion.

Accordingly, pending any opposition at the hearing, the objection to confirmation of the Plan will be SUSTAINED.

11:00 AM

1. [19-11901](#)-A-7     **IN RE: ARMANDO CRUZ**  
[19-1095](#)

AMENDED CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT  
8-12-2019    [[1](#)]

STRATEGIC FUNDING SOURCE, INC. V. CRUZ  
JARRETT OSBORNE-REVIS/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:                    Continued to October 25, 2023 at 11:00 a.m.

NO ORDER REQUIRED.

The pre-trial conference was previously continued to October 25, 2023 at 11:00 a.m. by an order entered on July 17, 2023. Doc. #238.

2. [23-10704](#)-A-7     **IN RE: ROSLYN THOMAS**  
[23-1023](#)     [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
5-16-2023    [[7](#)]

THOMAS V. UNITED STATES DEPARTMENT OF EDUCATION  
SUSAN HEMB/ATTY. FOR PL.  
REISSUED SUMMONS FOR 8/17/23

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

DISPOSITION:                    Continued to August 17, 2023 at 11:00 a.m.

ORDER:                            The court will issue an order.

A reissued summons was issued by the court on June 21, 2023, with a status conference date of August 17, 2023 at 11:00 a.m. Doc. #10. Therefore, this matter will be continued to coincide with the new status conference date.

3. [19-11628](#)-A-12     **IN RE: MIKAL JONES**  
[19-1081](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
6-28-2019    [[1](#)]

DILDAY ET AL V. JONES  
RILEY WALTER/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

4. [22-11042](#)-A-7     **IN RE: TIFFINI HUGHES**  
[22-1019](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT  
2-9-2023     [[37](#)]

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

NO RULING.

5. [21-11450](#)-A-7     **IN RE: ANTHONY FLORES**  
[21-1036](#)

RESCHEDULED PRE-TRIAL CONFERENCE RE: COMPLAINT  
8-24-2021     [[1](#)]

SAWUSCH ET AL V. FLORES  
JESSICA WELLINGTON/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:                    Continued to May 30, 2024 at 11:00 a.m.

NO ORDER REQUIRED.

The pre-trial conference was previously continued to May 30, 2024 at 11:00 a.m.  
by an order entered on July 17, 2023. Doc. #52.

6. [23-10963](#)-A-7     **IN RE: JESUS GUERRA**  
[23-1026](#)     [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
5-17-2023     [[1](#)]

GUERRA V. COMMUNITY IMPROVEMENT CAPITAL, L.L.C.  
HENRY NUNEZ/ATTY. FOR PL.

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

DISPOSITION:                    Continued to September 14, 2023 at 11:00 a.m.

ORDER:                            The court will issue an order.

Pursuant to the status conference statement filed by the plaintiff on  
July 18, 2023 (Doc. #7), the status conference is continued to September 14,  
2023 at 11:00 a.m. If the adversary proceeding is not dismissed by September 7,  
2023, the plaintiff shall file and serve a status report by September 7, 2023.

7. [21-10679](#)-A-13     **IN RE: SYLVIA NICOLE**  
[21-1023](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT  
5-26-2021    [[1](#)]

U.S. TRUSTEE V. NICOLE  
JUSTIN VALENCIA/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

8. [21-10679](#)-A-13     **IN RE: SYLVIA NICOLE**  
[23-1021](#)     [BJS-2](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL  
6-20-2023    [[89](#)]

NICOLE V. RAMIREZ ET AL  
BRADLEY SWINGLE/ATTY. FOR MV.

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

This adversary proceeding has been stayed. Order, Doc. #110.

Accordingly, the court will deny this motion to dismiss without prejudice to being filed again once the stay of this adversary proceeding has been lifted.