



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

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

Hearing Date: Wednesday, August 9, 2023

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

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

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

Video web address: <https://www.zoomgov.com/j/1612008012?pwd=K3pEdURsQWhoTzdrVVBtdGt6NHVvZz09>
Meeting ID: 161 200 8012
Password: 567681
ZoomGov Telephone: 669) 254-5252 (Toll Free)

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

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Procedures and Guidelines](#) for these and additional instructions.
3. Parties appearing through CourtCall are encouraged to review the [CourtCall Appearance Information](#).

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

1. [23-11502](#)-B-13 **IN RE: ERIN STEVENSON**
[MJD-1](#)

MOTION TO EXTEND AUTOMATIC STAY
7-26-2023 [\[9\]](#)

ERIN STEVENSON/MV
MATTHEW DECAMINADA/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.

Erin David Stevenson ("Debtor") requests an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #8.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

As a preliminary matter, the notice of hearing does not refer respondents to the pre-hearing dispositions on the court's website. Doc. #10. LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the notice entirely omits the above disclosure.

Typically, this motion would be denied without prejudice for the above procedural deficiency. However, the automatic stay in this case will expire prior to the court's next scheduled date for hearing motions in chapter 13 cases. Denial of this motion for procedural reasons would unduly prejudice Debtor because the automatic stay cannot be reimposed after it expires. Accordingly, the court will overlook this procedural

deficiency in this instance under LBR 1001-1(f). Debtor's counsel is advised to review the local rules and ensure procedural compliance in subsequent matter. Future violations of the local rules may result in a motion being denied without prejudice without a hearing.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay under subsection (a) shall terminate with respect to the debtor on the 30th day after the latter case is filed. Debtor had one case pending within the preceding one-year period that was dismissed: Case No. 22-11720-B-13 (Bankr. E.D. Cal.). That case was filed on October 5, 2022 and was dismissed on June 8, 2023 for unreasonable delay by the debtor that is prejudicial to creditors, failure to confirm a plan, failure to file tax returns, and failure to file a complete and accurate *Schedule E/F*. This case was filed on July 13, 2023. Doc. #1. The automatic stay will expire on August 12, 2023.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed. Such request must be made within 30 days of the petition date.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.' Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition.'" *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by *Taggart v. Lorenzen*, 139 S. Ct. 1785 (2019)).

In this case, the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith as to all creditors because Debtor has more than one previous case under chapter 13 that was pending within the preceding one-year period and Debtor failed to file or amend the petition or other documents as required by the Bankruptcy Code or the court without substantial excuse. § 362(c)(3)(C)(i)(I), (c)(3)(C)(i)(II)(aa).

Debtor declares that the previous case was dismissed because Debtor failed to confirm a chapter 13 plan. Doc. #12. Debtor has worked to resolve the chapter 13 trustee's objections in the previous case and believes that she will be able to confirm a plan in this case and make the proposed plan payments. *Id.* Debtor further declares that the case was filed in good faith and the plan has been proposed in good faith.

The proposed *Chapter 13 Plan* dated July 15, 2023 provides for 60 monthly payments of \$2,200.00 with a 17.15% dividend to unsecured claims. Doc. #8. Debtor's *Schedules I* and *J* indicate that Debtor receives \$2,200.00 in monthly net income, which is sufficient for Debtor to afford the proposed plan payment. Doc. #1.

In contrast to the previous case, Debtor was receiving \$2,110.00 in monthly net income when the case was filed in October 2022, so Debtor's financial condition has changed slightly since the last case was filed. See, Case No. 22-11720-B-13 (Bankr. E.D. Cal.), Doc. #1. However, Debtor's *Amended Schedules I & J* filed on March 31, 2023 are nearly identical to those filed with this motion. Debtor's personal affairs have substantially changed through filing missing tax returns and added Debtor's spouse's debts to *Schedule E/F*.

Based on the moving papers and the record, the presumption appears to have been rebutted by clear and convincing evidence because Debtor's financial circumstances and personal affairs have changed. Debtor's petition appears to have been filed in good faith and the proposed plan does appear to be feasible.

This matter will be called and proceed as scheduled. In the absence of opposition at the hearing, this motion may be GRANTED. 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).

2. [23-10907](#)-B-13 **IN RE: LAURA MIRANDA**
[KMM-1](#)

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

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

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 Objecting Party shall submit a proposed order after hearing.

This objection was originally heard on July 6, 2023. Doc. #28.

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

Debtor responded. Doc. #23.

This objection was continued to August 9, 2023 to be heard in connection with Debtor's motion to value Creditor's collateral, which is the subject of matter #3 below. The court intends to deny the motion to value collateral for procedural reasons. This matter will be called and proceed as scheduled.

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

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

In response, Debtor notes that the plan is not proposing to pay Creditor \$42,000; instead, Creditor will be paid \$0 based on the value of the collateral and Creditor's claim will be treated as a general unsecured claim. Doc. #23. Debtor did file a motion to value collateral that is set for hearing in matter #3 below, but the court intends to deny that motion without prejudice for procedural reasons.

Sections 1.04 and 3.08(c) of the plan require separately filed and served motions to value collateral for claims classified in Class 2. Doc. #8. Although Debtor did file a motion to value collateral, the court intends to deny that motion. Therefore, Debtor will need to file a new motion to value collateral before Creditor's claim can properly be listed in Class 2(C).

This matter will be called and proceed as scheduled to inquire about the parties' positions. The court intends to SUSTAIN the objection because Debtor has failed to properly value Creditor's collateral.

3. [23-10907](#)-B-13 **IN RE: LAURA MIRANDA**
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF FIRST FRANKLIN MORTGAGE LOAN TRUST
6-15-2023 [\[18\]](#)

LAURA MIRANDA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Notwithstanding the secured creditor's opposition, this motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, the notice of hearing does not refer respondents to the pre-hearing dispositions on the court's website. Doc. #19. LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the notice entirely omits the above disclosure. *Id.*

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

Second, though not presently a reason for denial, service of the motion appears to be defective. First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-FFC, U.S. Bank National Association, as Trustee, successor in interest to Bank of America, N.A., as Trustee, successor by merger to LaSalle Bank National Association, as Trustee as serviced by Specialized Loan Servicing LLC ("Creditor") waived the service defect by filing a response. Doc. #25.

As an informative matter, Fed. R. Bankr. P. ("Rule") 3012(b) provides that a request to determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 13 case. When the request is made in a chapter 13 plan, the plan must be served in the manner provided in Rule 7004.

Rule 3012(b) is silent as to whether a determination of value by motion or claim objection requires Rule 7004 service. However, Rule 9014(b) requires contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. "Valuations

pursuant to 11 U.S.C. § 506(a) and [Rule] 3012 are contested matters and do not require the filing of an adversary proceeding." *In re Well*, 2009 Bankr. LEXIS 5679 at *4 (Cal. E.D. Bankr. May 7, 2009); see also *In re Johnson*, 2020 Bankr. LEXIS 1730 at *1 (Bankr. D.D.C. July 2, 2020) (denying motion to value a motor vehicle because the debtor did not affect proper service under Rule 7004, which is required under Rule 9014); *In re Kelley*, 2020 Bankr. LEXIS 1276 at **1-2 (Bankr. D.D.C. May 11, 2020) (reasoning that a motion to redeem a vehicle under § 722, which implicated § 506(a)(2) to the extent the vehicle was secured, initiated a contested matter requiring Rule 7004 service). On this basis, Creditor must be served in accordance with Rule 7004 regardless of whether the valuation occurs by motion or by the chapter 13 plan.

Creditor is a trust and it is unclear whether, by virtue of its trustee, it would be classified as a bank insured by the Federal Deposit Insurance Corporation ("FDIC"), thus causing it to be an insured depository institution under 11 U.S.C. § 101(35)(A) and 12 U.S.C. § 1813(c)(2) (an "insured depository institution" is any bank insured by the FDIC). If so, service would need to comply with Rule 7004(h), which would require service to be made by certified mail and addressed to an officer, unless one of three exceptions specified in subsections (h)(1) to (3) have been met. There is no indication that any of these exceptions apply. Under Rule 7004(i), an officer does not need to be named in the address if the envelope is addressed to the proper address and directed to the attention of the officer's position or title.

If Creditor' is not classified as an insured depository institution, it would still need to be served in accordance with Rule 7004(b)(3), which can be accomplished by mailing a copy of the pleadings to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process, and if required by statute, by also mailing a copy to the defendant.

Here, Debtor served this motion, supporting documents, and the chapter 13 plan on Creditor at the address listed in the proof of claim and to its loan servicer. Doc. #22. However, neither of these attempts at service appear to comply with Rule 7004(b)(3).

4. [23-10215](#)-B-13 **IN RE: ALICE CAMERON**
[MHM-2](#)

MOTION TO DISMISS CASE
6-13-2023 [[40](#)]

MICHAEL MEYER/MV
D. GARDNER/ATTY. FOR DBT.
DISMISSED 7/10/23

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

On July 10, 2023, the court entered an order dismissing this case.
Doc. #48. Accordingly, the chapter 13 trustee's motion to dismiss will
be DENIED AS MOOT.

5. [22-10218](#)-B-7 **IN RE: CHASE/ANGELA ATKINS**
[MHM-1](#)

MOTION TO DISMISS CASE
6-16-2023 [[38](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
CONVERTED TO CHAPTER 7 7/25/23

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

On July 25, 2023, this case was voluntarily converted to chapter 7.
Doc. #44. Accordingly, the chapter 13 trustee's motion to dismiss will
be DENIED AS MOOT.

6. [23-10030](#)-B-13 **IN RE: CRISTY PAREDES**
[MHM-2](#)

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

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

NO RULING.

This motion was originally heard on July 6, 2023. Doc. #53.

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

Cristy Paredes ("Debtor") filed a response on June 16, 2023, indicating that Debtor originally intended to sell her home to pay off the plan but recently changed her mind, and therefore, Debtor would file a motion to confirm a modified plan. Doc. #45. However, the response was stricken because it was not supported by admissible evidence. Doc. #56. Debtor filed a motion to confirm plan set for hearing on August 9, 2023, which is the subject of matter #7 below. RSW-1. The court continued the hearing on this motion to the same date and time to be heard in connection with that motion to confirm plan. Doc. #56. The court also set September 6, 2023 as a bar date by which a chapter 13 plan must be confirmed or the case would be dismissed on Trustee's declaration. *Id.*

The court intends to deny without prejudice the motion to confirm plan for procedural reasons in matter #7 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). There is "cause" for dismissal under 11 U.S.C. § 1307(c) and (c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and failure to confirm a chapter 13 plan.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors by failing to confirm a chapter 13 plan. This case was filed on January 6, 2023 and will have been pending for more than seven months as of the date of this hearing.

Trustee has reviewed the schedules and determined that Debtor's real property is exempted and Debtor's personal property is encumbered.

Since there is no equity that could be realized for the benefit of the estate, dismissal, rather than conversion, best serves the interests of creditors and the estate.

This matter will be called and proceed as scheduled to inquire about the parties' intentions.

7. [23-10030](#)-B-13 **IN RE: CRISTY PAREDES**
[RSW-1](#)

MOTION TO CONFIRM PLAN
7-5-2023 [\[47\]](#)

CRISTY PAREDES/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Notwithstanding the PHH Mortgage Corporation's objection, this motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

The debtor failed to use the *Official Certificate of Service Form*, EDC 007-005 ("Official Form").¹ Doc. #52. LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users to be documented using the Official Form.

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

¹ The Official Form and related information can be found on the court's website. See <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited Aug. 2, 2023).

8. [23-11038](#)-B-13 **IN RE: CLAUDIA ANDRADE**
[MHM-1](#)

MOTION TO DISMISS CASE
6-28-2023 [[23](#)]

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

On August 2, 2023, the debtor voluntarily converted this case from chapter 13 to chapter 7. Doc. #31. Accordingly, the chapter 13 trustee's motion to dismiss will be DENIED AS MOOT.

9. [18-11141](#)-B-13 **IN RE: ELENA HARPER**
[MHM-5](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
6-26-2023 [[160](#)]

MICHAEL MEYER/MV
NICHOLAS WAJDA/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

The Chapter 13 trustee in this matter is Michael H. Meyer ("Trustee"). The Debtor is Elena Janel Harper ("Debtor"), and the Creditor to whom payments owed under the Plan are at the heart of this dispute is Freedom Mortgage Corporation ("Creditor").

Trustee moves for an order determining: (1) Debtor has cured the default on the loan with Creditor, and (2) that Debtor is current on the mortgage payments owed to Creditor through March 2023. Creditor responded to the motion on July 24, 2023. Doc. #168. Debtor filed a reply to Creditor's response on August 3, 2023.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of

any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

This case presents a procedural oddity in that, while the Creditor timely filed its response, the Debtor filed a reply brief rather than the Movant/Trustee. Doc. #170. That reply brief was entered on August 3, 2023, one day after the 7-day deadline for filing responses by the Movant. However, the reply brief mostly repeats factual assertions first made by Trustee in the motion and also asserts that Debtor made a payment on or about August 1, 2023 which, if received, should cure any remaining outstanding balance owed to Creditor, thus mooting the case. *Id.* Accordingly, the court will overlook any issues with the timeliness of the Debtor's reply and take it into consideration when ruling.

The defaults of the above-mentioned parties in interest except Creditor and Debtor are entered.

Rule 3002.1(f) requires the trustee, within 30 days after completion of payments under the plan, to file and serve on the claim holder, debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on a claim. The record reflects that the Trustee sent notice to Debtor of her completion of all plan payments on May 25, 2023. Doc. #154. The docket also reflects that the Trustee filed the Notice of Final Cure Mortgage Payment on June 2, 2023, which was timely. Doc. #156.

Rule 3002.1(g) provides that, within 21 days after service of the notice under subdivision (f), the holder shall file and serve on the debtor, debtor's counsel, and the trustee, a statement indicating: (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim; and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5). Creditor timely filed its response to the Final Cure notice on June 14, 2023. (No Docket Number). This response asserts that Debtor was not current on all post-petition payments and still owed \$3,093.94 in post-petition payments and \$1,400.00 in outstanding fees. *Id.* Specifically, the post-petition payments alluded to were payments which the Debtor was to pay directly to Creditor beginning in April 2023. *Id.* The origin of the fees was not explained in the response.

Rule 3002.1(h) provides that on motion by the trustee filed within 21 days after service of the statement under subdivision (g), the court shall, after notice and a hearing, determine whether the debtor has cured the default and paid all required post-petition amounts. The Trustee timely filed the instant motion, noting that (1) the plan does not provide for any "fees," (2) the plan only calls for payments through March 2023, but Creditor's response asserts a deficiency for unmet payments beginning in April 2023, and (3) the breakdown of

payments submitted by Creditor in the response reflects only 55 payments received from Trustee, a discrepancy which Trustee suggests arose from a period where Debtor was in forbearance and payments were not made by the Trustee until later in the plan's life. Doc. #160.

After the filing of the instant motion, Creditor filed an Amended Response to the Notice of Final Cure Payment on July 5, 2023, which reduced the outstanding balance allegedly owed by Debtor to \$3,093.94 for post-petition payments that accrued from April 1, 2023, through June 1, 2023, and for fees in the amount of \$1,400.00. (No Docket Number.)

On July 24, 2023, the Creditor timely filed its response to the instant motion. Doc. #168. In the response, Creditor clarified that all 60 trustee post-petition payments had been received and that the \$1,400 in fees was to be paid outside the plan. *Id.* Accordingly, Creditor requests that the instant motion be denied as moot or, alternatively, that the court only an issue an order confirming that Debtor is current on all mortgage payments to Creditor through March 2023 and that such confirmation be without prejudice to the outstanding post-petition fees of \$1,400.00 and any loan default from April 1, 2023, onward.

On August 3, 2023, Debtor filed a reply to Creditor's response averring that on August 1, 2023, Debtor made a payment to Creditor in the amount of \$6,650.98, which purportedly satisfies all outstanding fees and deficiencies owed to Creditor through August 2023. *Id.*

This matter will be called as scheduled. The court is inclined to GRANT this motion. However, the court will still call this matter so that any factual questions over whether Debtor has paid all outstanding fees and is current on her mortgage obligations through August as averred in Debtor's reply.

10. [23-10946](#)-B-13 **IN RE: KENDRA AMOS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-6-2023 [[31](#)]

DISMISSED 7/10/23

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing this case was already entered on July 10, 2023. Doc. #36. Accordingly, this order to show cause will be dropped and taken off calendar as moot.

11. [23-10946](#)-B-13 **IN RE: KENDRA AMOS**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-9-2023 [\[26\]](#)

MICHAEL MEYER/MV
DISMISSED 7/10/23

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

On July 10, 2023, the court entered an order dismissing this case. Doc. #36. Accordingly, the chapter 13 trustee's objection will be OVERRULED AS MOOT.

12. [21-11149](#)-B-13 **IN RE: DENNIS/LAUREN DEVERA**
[RSW-3](#)

MOTION FOR AUTHORIZATION TO RECEIVE FUNDS FROM CALHFA
7-13-2023 [\[45\]](#)

LAUREN DEVERA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

Dennis Marcello Devera and Lauren Louise Devera (collectively "Debtors") seek authorization to receive mortgage funds from California Housing Finance Agency ("CHFA") through the California Mortgage Relief Program to be paid directly to their mortgage servicer.

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

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

Debtors filed chapter 13 bankruptcy on May 1, 2021 and confirmed their plan on August 19, 2021. Docs. #1, #33. Debtors applied for the California Mortgage Relief Program administered by CHFA. As a result, Debtors are to receive an undisclosed amount from CHFA for direct

payment to their mortgage servicer and will not become part of the bankruptcy estate. These funds will not have to be repaid.

This matter will be called and proceed as scheduled because only sparse details about the program were provided.

13. [22-12056](#)-B-13 **IN RE: SHANNON HAGER**
[MHM-2](#)

MOTION TO DISMISS CASE
6-13-2023 [\[73\]](#)

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

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

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

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to September 6, 2023 at 9:00 a.m. to be heard in connection with the debtor's motion to confirm the first modified plan. See Docs. ##82-87; RSW-3.

14. [19-14666](#)-B-13 **IN RE: JAMES CULVER**
[TCS-2](#)

MOTION TO VACATE DISMISSAL OF CASE
7-22-2023 [\[55\]](#)

JAMES CULVER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DISMISSED 07/12/2023
RESPONSIVE PLEADING

NO RULING.

James Lucian Culver ("Debtor") asks the court to vacate the dismissal of his bankruptcy case under Fed. R. Civ. P. ("Civ. Rule") 60(b)(1) and (6), incorporated under Fed. R. Bankr. P. ("Rule") 9024. Doc. #55. Debtor's counsel claims that inadvertence by counsel resulted in the dismissal of the case.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. While no opposition was required prior to the hearing date, Michael H. Meyer, the Trustee for this case ("Trustee") filed a Response on July 25, 2023, which the court will take into consideration. Doc. #59. If

additional 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.

Debtor filed a bare bones petition on November 6, 2019. Doc. #1. He later filed his Schedules and plan on November 21, 2019, and his amended plan on November 27, 2019. Doc. #14, 12, 18. That amended plan was confirmed on March 16, 2020. Doc. #33. Debtor's Schedule E/F lists no priority unsecured claims, and his confirmed 36-month plan makes no provision for priority unsecured claims. Docs. #11, #18. In fact, the Debtor listed no secured claims either, and the plan provided for a 0% distribution to his nonpriority unsecured creditors, whose claims totaled \$158,104.00. Doc. #18. Debtor's plan payments exclusively went to administrative claims, including an unpaid balance of \$3,775.00 to Debtor's counsel pursuant to LBR 2016-1(c) [the "no-look" fee].

However, while Debtor neither listed nor provided for priority unsecured claims, such claims did exist. The claims register notes that the Internal Revenue Service ("IRS") filed a proof of claim purportedly entitled to priority on December 3, 2019, and the California Franchise Tax Board ("FTB") filed a proof of claim purportedly entitled to priority on December 20, 2019. *See Claims Register* at #2 and #7. Both claims were subsequently amended to reflect priority claims in the amount of \$5,345.80 for the IRS and \$615.15 for the FTB.

The Trustee's preliminary response to the instant motion avers that he served a list of filed and unfiled claims on the Debtor on or about June 18, 2020. Doc. #59. The Trustee subsequently sent a letter served on both Debtor and Debtor's counsel dated December 30, 2022, advising that the plan was not complete and that additional funds would be required because of the priority claims. *Id.* The Trustee asserts that he received no response to either document and no additional plan payments after November 2022, and accordingly, he consequently filed a Motion to Dismiss on June 8, 2023. *Id.*

In his written response to the Motion to Dismiss, the Debtor through counsel stated "[i]t is believed" that the Debtor has paid the required funds through TFS and asked the Trustee to withdraw the motion. Doc. #49. However, that response was untimely and, in fact, was not filed until after the posting of the court's Preliminary Hearing Disposition, which resulted in the matter not being called and the PHD becoming the final ruling granting the Motion to Dismiss. Doc. #53. Furthermore, Debtor's "belief" that he had already paid the required funds is belied by the Trustee's assertion that he received no additional funds from Debtor after November 2022. Doc. #59.

In the instant motion, Debtor cites Rule 9024 for the proposition that vacatur is appropriate on grounds of "(1) mistake, inadvertence, surprise, or excusable neglect." Doc. #55. The Debtor cites no other authority in the Motion to Vacate. *Id.*

In previous cases where relief such as this was sought, the Court based its decision on *Pioneer Inv. Servs. V. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993), which presents a list of factors for the court to consider in determining whether counsel's neglect was excusable and so the dismissal should be vacated. "[The determination] of what sorts of neglect will be considered 'excusable', we conclude [is] at bottom an equitable one taking into account all relevant circumstances surrounding the party's omission." *Id* at 395. The factors are outlined below.

Prejudice to the Debtor. Debtor here claims he is prejudiced because if the dismissal stands, he will be denied a discharge despite completing all the monthly payments required by the plan and "essentially [completing the] Chapter 13 plan." The Court initially notes that the Trustee's response appears to dispute that characterization and states that even now the Debtor is deficient in plan payments and an additional \$834.56 is required to complete all plan payments.

In light of this factual dispute, the court will defer consideration of this factor until after hearing from the parties.

Length of delay and impact on the proceedings. Debtor here filed this motion only fourteen days following dismissal of the case. There is no significant post-dismissal delay here.

That said, the court is troubled by the fact that, per the Trustee's Response, the Trustee informed both Debtor and Debtor's counsel in December 2022 that the plan was not complete, and the Trustee did not file the Motion to Dismiss until June 6, 2023. Debtor has never denied receiving notice of the deficiency and had ample time to correct the deficiency prior to dismissal.

In addition, it was nearly two months between when the notice of calendaring error was sent to counsel—who acknowledges receipt of the notice—and when the Trustee filed the motion to dismiss. And nearly three months before opposition had to be filed to the dismissal motion.

In light of these factors, the court will defer consideration of this factor until after hearing from the parties.

Reason for the delay and whether it was within movant's control.

Debtor here argues, through counsel, that the final payment needed to complete his plan was, in fact, made, but it was not received by the Trustee prior to the final ruling on the pre-hearing disposition entered on July 10, 2023. Again, this is belied by the Trustee's response to the instant motion averring that no additional funds have been received from Debtor since November 2022.

Out of an abundance of caution, the court will defer consideration of this factor until after hearing from the parties.

Movant's good faith. There is no evidence here that Debtor or counsel are acting in bad faith.

On balance, the *Pioneer* factors weigh against granting the motion, but disputed factual assertions lead the court to defer final ruling until after the hearing in this matter.

This matter will be called and proceed as scheduled.

15. [23-10472](#)-B-13 **IN RE: CRYSTAL JOHNSON**
[MHM-1](#)

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

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn; dropped from calendar.

NO ORDER REQUIRED.

The chapter 13 trustee withdrew this objection to confirmation on August 7, 2023. Accordingly, this objection will be dropped and taken off calendar pursuant to the withdrawal.

16. [23-10472](#)-B-13 **IN RE: CRYSTAL JOHNSON**
[MHM-2](#)

MOTION TO DISMISS CASE
6-21-2023 [\[23\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn; dropped from calendar.

NO ORDER REQUIRED.

The chapter 13 trustee withdrew this motion to dismiss on August 7, 2023. Accordingly, this motion will be dropped and taken off calendar pursuant to the withdrawal.

17. [23-11573](#)-B-13 **IN RE: JASON/JULIE MUNIZ**
[WSL-1](#)

MOTION TO EXTEND AUTOMATIC STAY
7-25-2023 [\[10\]](#)

JULIE MUNIZ/MV
GREGORY SHANFELD/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.

The Debtors ("Debtors"), Jason and Julie Muniz, request an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #10.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

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

Second, the certificate of service does not comply with LBR 7005-1.

Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.

LBR 7005-1(a). The Clerk's Matrix of Creditors should be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of downloaded. LBR 7005-1(d). In this instance, debtors' counsel attached a custom matrix, specifically Attachment 6A2, which exceeds six creditors and should have been an Official Matrix.

Typically, this motion would be denied without prejudice for the above procedural deficiencies. However, the automatic stay in this case will expire prior to the court's next scheduled date for hearing motions in chapter 13 cases. Denial of this motion for procedural reasons would unduly prejudice Debtor because the automatic stay cannot be reimposed after it expires. Accordingly, the court will overlook this procedural deficiency in this instance under LBR 1001-1(f). Debtor's counsel is advised to review the local rules and ensure procedural compliance in subsequent matter. Future violations of the local rules may result in a motion being denied without prejudice without a hearing.

Under 11 U.S.C. § 362(c) (3) (A), if the debtor has had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay under subsection (a) shall terminate with respect to the debtor on the 30th day after the latter case is filed. Debtors have had one case both filed and dismissed within the preceding one-year period: Case No. 23-10078-B-13 (Bankr. E.D. Cal.). That case was filed on January 18, 2023, and was dismissed on May 3, 2023 for failure to make plan payments. The instant case was filed on July 21, 2023. Doc. #1. Consequently, the automatic stay will expire on August 20, 2023.

11 U.S.C. § 362(c) (3) (B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed. Such request must be made within 30 days of the petition date.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c) (3) (C) exist. The presumption of bad faith may be rebutted by the Debtor through clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by *Taggart v. Lorenzen*, 139 S. Ct. 1785 (2019)).

This case is presumed to be filed in bad faith as to all creditors because Debtor has a previous case under chapter 13 that was pending within the preceding one-year period. § 362(c) (3) (C) (i) (I).

Joint Debtor Jason Muniz ("Jason") declares that the previous case was dismissed because he failed to timely make plan payments as required. Doc. #12. Jason attributes this failure to make plan payments to mental health issues arising from his change to a more stressful job as a security guard in a maximum-security prison. He avers that he has since begun mental health treatment and believes that he will be able to confirm a plan in this case and make all proposed plan payments. *Id.* Debtors further declare that the instant case was filed in good faith and the plan has been proposed in good faith.

In the prior case, the Amended Chapter 13 plan dated January 24, 2023, provided for 60 monthly payments of \$4262.00 with a 100% dividend to unsecured claims. The Debtors' *Schedules I and J* projected a monthly net income of \$4,791.42.

In the instant case, the plan dated July 21, 2023, provides for 60 monthly payments of \$2,427.00 with a 23% dividend to unsecured claims. The Debtors' *Schedules I and J* project a monthly net income of \$2,427.01.

Debtors' filings reflect a significant reduction in income between the filing of the two cases, with their projected monthly net income dropping from \$4,791.42 to \$2,427. This appears to be attributable to a reduction in Jason's income from \$9,913.58 in the prior case to \$8,368.43 in the instant case and an increase in Julie's payroll deductions from \$823.86 to \$1,328.05. The Debtors' expenses have increased slightly from \$6,333.00 in the prior case to \$6,865 in the instant case.

Based on the moving papers and the record, the presumption appears to have been rebutted by clear and convincing evidence because Debtors' financial circumstances and personal affairs have changed. Debtors' petition appears to have been filed in good faith and the proposed plan does appear to be feasible.

This matter will be called and proceed as scheduled. In the absence of opposition at the hearing, this motion may be GRANTED. 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).

18. [23-10075](#)-B-13 **IN RE: REFUJIO GUILLEN**
[RSW-3](#)

MOTION TO CONFIRM PLAN
7-5-2023 [\[82\]](#)

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

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Notwithstanding the objections from the chapter 13 trustee and the People of the State of California, this motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, Debtor failed to use the *Official Certificate of Service Form*, EDC 007-005 ("Official Form").² Doc. #88. LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users to be documented using the Official Form.

Second, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, Refugio Guillen ("Debtor") filed this motion on July 5, 2023. Doc. #82. The DCN for this motion is RSW-3. On July 11, 2023, Debtor filed a motion to avoid the lien of the People of the State of California. Doc. #100. The DCN for that motion is also RSW-3, and therefore, it does not comply with the local rules. Each new motion required a different, unused DCN.

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

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

19. [23-10075](#)-B-13 **IN RE: REFUJIO GUILLEN**
[RSW-3](#)

MOTION TO AVOID LIEN OF THE PEOPLE OF THE STATE OF
CALIFORNIA
7-11-2023 [\[100\]](#)

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

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, on July 5, 2023, Refugio Guillen ("Debtor") filed a motion to confirm chapter 13 plan, which is set for hearing on August 9, 2023 in matter #18 above. The DCN for that motion was RSW-3.

On July 11, 2023, Debtor filed this motion to avoid lien. Doc. #100. The DCN for this motion is also RSW-3, and therefore, it does not comply with the local rules. Each new motion required a different, unused DCN.

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

20. [23-10685](#)-B-13 **IN RE: RAYSHAWN LYONS**
[RSW-2](#)

MOTION TO CONFIRM PLAN
6-5-2023 [\[20\]](#)

RAYSHAWN LYONS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

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

ORDER: The court will issue an order.

Rayshawn Deon Lyons ("Debtor") moves for an order confirming the *Chapter 13 Plan* dated April 2, 2023. Doc. #20.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected because the plan provides for payments to creditors for a period longer than five years under 11 U.S.C. § 1322(d). Doc. #39. Specifically, the plan takes 73.37 months to fund based on the stipulated value between Debtor and Freedom Truck Finance. To fund, the plan payment would need to increase to \$1,120 per month for 59 months or \$1,100.53 per month for 60 months. *Id.*

This motion will be CONTINUED to September 6, 2023 at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's objection to confirmation is withdrawn, the Debtor shall file and serve a written response to the objection not later than August 23, 2023. The response shall specifically address each issue raised in Trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee shall file and serve a reply, if any, by August 30, 2023.

If the Debtor elects to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than August 23, 2023. If the Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

Additionally, the court notes that the original certificate of service does not comply with Local Rule of Practice ("LBR") 7005-1, which requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users to be documented using the Official Form. Doc. #24. Debtor partially resolved this issue by using the correct form for service of

the amended notice of hearing, but Debtor has not yet proven service using the correct form for the motion and declarations. Doc. #27.

21. [23-10685](#)-B-13 **IN RE: RAYSHAWN LYONS**
[RSW-3](#)

MOTION TO VALUE COLLATERAL OF FREEDOM TRUCK FINANCE
6-15-2023 [\[29\]](#)

RAYSHAWN LYONS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Resolved by stipulation.

NO ORDER REQUIRED.

Rayshawn Deon Lyons ("Debtor") moves for an order valuing a 2012 Freightliner Cascadia ("Vehicle") at \$20,000.00 under 11 U.S.C. § 506(a). Doc. #29. The Vehicle is encumbered by a purchase money security interest in favor of Freedom Truck Finance ("Creditor").

After this motion was filed, Debtor and Creditor stipulated to value the Vehicle at \$24,850.00. Doc. #36. The court approved the stipulation on July 14, 2023. Doc. #38. Accordingly, this motion is RESOLVED BY STIPULATION between the parties. Creditor's secured claim will be fixed at \$24,850.00. The order will be effective upon confirmation of a chapter 13 plan.

22. [23-10487](#)-B-13 **IN RE: CHERYLANNE FARLEY**
[MHM-2](#)

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

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

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court takes judicial notice under Fed. R. Evid. 201 of the trustee's motion to dismiss in matter #23 below. MHM-3. The court intends to dismiss this case for failure to make payments due under

the plan in that matter. Accordingly, this motion to dismiss will be DENIED AS MOOT.

23. [23-10487](#)-B-13 **IN RE: CHERYLANNE FARLEY**
[MHM-3](#)

MOTION TO DISMISS CASE
6-21-2023 [\[32\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") 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 and failure to make all payments due under the plan. Doc. #32. Debtor is delinquent in the amount of \$1,780.00. Doc. #32. Cherylanne Lee Farley ("Debtor") did not oppose.

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

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

(B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors because Debtor has failed to make all payments due under the plan. Trustee indicates that Debtor is delinquent in the amount of \$1,780.00 as of June 21, 2023. Doc. #34. Before this hearing, two more payment in the amount of \$890.00 will also become due on June 25 and July 25, 2023. *Id.*

The court takes Judicial Notice under Fed. R. Evid. 201 of the Trustee's motion to Dismiss MHM-2 (# 23 above). Debtor has not filed the requisite tax returns under § 1308. This is an independent ground to dismiss the case. Debtor's failure to provide evidence supporting her opposition to the previous motion to dismiss (MHM-2) is another independent ground for dismissal since Debtor has not complied with the court's order.

In addition, Trustee has reviewed the schedules and determined that Debtor's assets are over encumbered and are of no benefit to the estate. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion, best serves the interests of creditors and the estate. Doc. #32.

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

24. [23-11487](#)-B-13 **IN RE: TRACI BRAZIL**
[BN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-21-2023 [\[10\]](#)

TRI COUNTIES BANK/MV
ROBERT MCWHORTER/ATTY. FOR MV.

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

The movant withdrew this motion on July 31, 2023. Doc. #47. Accordingly, this motion will be dropped and taken off calendar pursuant to the withdrawal.

10:00 AM

1. [23-10416](#)-B-7 **IN RE: MARY GONZALEZ**
[RSW-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE, N.A.
6-16-2023 [[17](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Mary Gonzales ("Debtor") moves to avoid a lien in favor of Capital One, N.A. ("Creditor") encumbering residential real property located at 823 Bamboo Court, Tehachapi, California ("Property") in the amount of \$11,551.29. Doc. #17.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Debtor also complied with Fed. R. Bankr. P. 7004(h) and (i) by serving Creditor's CEO via certified mail on April 26, 2023. Doc. #21. The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

None of the above-mentioned parties responded to the motion, and their defaults are hereby entered, and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the

exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the amount of \$11,551.29 on January 18, 2023. *Exh. 3*, Doc. #20. The judgment was issued on January 27, 2023 and was recorded in Kern County on February 14, 2023 *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #19.

As of the petition date, Property had an approximate fair market value of \$278,400. *Sched. A/B*, Doc. #1. Property was unencumbered, and Debtor claimed a \$ 339,203.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C.*, Doc. #1.

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

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

Amount of judgment lien	\$11,551.29
Total amount of unavoidable liens	+ \$0.00
Debtor's claimed exemption in Property	+ \$339,203.00
<i>Sum</i>	= \$350,754.29
Debtor's claimed value of interest absent liens	- \$278,400.00
Extent lien impairs exemption	= \$72,354.29

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

Fair market value of Property	\$278,400.00
Total amount of unavoidable liens	- \$0.00
Homestead exemption	- \$339,203.00
Remaining equity for judicial liens	= (\$60,803.00)
Creditor's judicial lien	- \$11,551.29
Extent Debtor's exemption impaired	= (\$72,354.29)

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

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

2. [23-10823](#)-B-7 **IN RE: SANDRA ROBISON**
[EPE-1](#)

MOTION TO EXTEND DEADLINE TO FILE A REAFFIRMATION AGREEMENT
AND/OR MOTION TO DELAY DISCHARGE
7-21-2023 [\[15\]](#)

SANDRA ROBISON/MV
ERIC ESCAMILLA/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.

Sandra Kay Robison aka Sandra Kay Robison Cruz ("Debtor") moves for an order to extend the deadline to file a reaffirmation agreement and to defer entry of discharge.³ Doc. #15.

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

Fed. R. Bankr. P. ("Rule") 4008(a) requires a reaffirmation agreement to be filed no later than 60 days after the first date set for the meeting of creditors. The court is permitted to enlarge the time for filing a reaffirmation agreement "at any time." However, 11 U.S.C. § 524(c)(1) requires the agreement to be made prior to entry of

discharge. See *In re Golladay*, 391 B.R. 417, 422 at n.1 (Bankr. C.D. Ill. 2008) (“[W]here it can be shown that the reaffirmation agreement was ‘made,’ i.e. signed before the granting of the discharge, then the reaffirmation agreement may be ‘filed’ after the granting of the discharge.”) (emphasis in original), quoting *In re Davis*, 273 B.R. 152, 153 (Bankr. S.D. Ohio 2001); *In re Lucious*, 2012 Bankr. LEXIS 3572 (Bankr. N.D. Ohio Aug. 1, 2012).

Rule 4004(c)(2) allows the court to defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may further defer entry of the order.

Here, Debtor filed chapter 7 bankruptcy on April 24, 2023. Doc. #1. The first date set for the meeting of creditors was May 22, 2023, and therefore, the deadline to file a reaffirmation agreement was July 21, 2023. Docket generally

Debtor seeks to enter into a reaffirmation agreement with United Wholesale Mortgage with respect to the mortgage on Debtor’s residence. Doc. #17. Debtor has been advised that United Wholesale Mortgage has been negotiating a reaffirmation agreement with Debtor’s attorney to finalize and complete the reaffirmation agreement. Since the reaffirmation agreement cannot be negotiated, prepared, and executed prior to the July 21, 2023 deadline, Debtor filed this motion to extend the deadline and defer entry of discharge by 30 days to give Debtor sufficient time to negotiate, execute, and file the reaffirmation agreement. The 30th day after the original July 21, 2023 deadline is Sunday, August 20, 2023. Therefore, under Rule 9006(a)(3)(A), the deadline would be further extended to August 21, 2023.

Debtor filed a reaffirmation agreement with United Wholesale Mortgage on August 3, 2023. Doc. #23.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion. The deadline for Debtor to file a reaffirmation with United Wholesale Mortgage will be extended to August 21, 2023 under Rule 4008(a). Further, entry of discharge will be deferred to August 21, 2023 under Rule 4004(c)(2).

³ The first sentence of the motion asks to extend the automatic stay. Doc. #15. This appears to be a typographical error because the motion does not discuss extension of the automatic stay. The motion will be DENIED as to the request to extend the automatic stay.

3. [23-10027](#)-B-7 **IN RE: JULIE MOORE**
[FW-2](#)

MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE
INJUNCTION
7-12-2023 [\[25\]](#)

JULIE MOORE/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

4. [23-11334](#)-B-7 **IN RE: GERARDO/VELMA GALICIA**
[BDB-1](#)

MOTION TO COMPEL ABANDONMENT
7-25-2023 [\[12\]](#)

VELMA GALICIA/MV
BENNY BARCO/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.

Gerardo and Velma Galicia (collectively "Debtors") move for an order compelling chapter 7 trustee Irma C. Edmonds ("Trustee") to abandon the estate's interest in certain sole proprietorship business assets, specifically, a refrigerator, a mixer, and a printer ("Business Assets") used in Velma Galicia's home bakery. Doc. #12.

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

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

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee

to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

Co-Debtor Velma Galicia is the owner and operator of cottage bakery called VELS TREATS AND THINGS which she operates of the Debtors' home in Madera, California. Doc. #14. Debtors seek to compel Trustee to abandon certain Business Assets, which are listed in the schedules as follows:

Assets	Value	Exempt	Lien	Net
Refrigerator, mixer, and printer	\$400.00	\$400.00	\$0.00	\$0.00

Id.; *Sched. A/B* ¶ 40, Doc. #1. None of the Business Assets are encumbered by any secured creditors. *Sched. D, id.* Debtor exempted all the Business Assets for their full value as tools of the trade under Cal. Code Civ. Proc. § 704.060, and the listed value is well within the statutory limits for exemptions on tools of trade.

Further, Velma certifies that she was qualified and eligible to claim the exemptions under applicable law and understands that if for any reason it is determined that Debtor is not qualified to claim an exemption in the property listed, or if there is some other error in the exemption claimed, Trustee may demand that Debtors compensate the estate for any damage caused by the claimed exemption. Debtors agree to not amend the exemptions affecting the Business Assets unless Trustee stipulated to that amendment or such relief is granted by further order of the court. *Id.*

In the absence of opposition at the hearing, the court will find that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and is encumbered or exempted in their entirety. Therefore, the court intends to GRANT this motion.

The order shall specifically include the property to be abandoned.

5. [23-11238](#)-B-7 **IN RE: ALYSSA ZERMENO**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
6-9-2023 [\[6\]](#)

ALYSSA ZERMENO/MV
ALYSSA ZERMENO/ATTY. FOR MV.

NO RULING.

6. [23-11175](#)-B-7 **IN RE: JASWINDER SINGH
[SKI-1](#)**

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-30-2023 [\[13\]](#)

MERCEDES-BENZ FINANCIAL SERVICES USA LLC/MV
VINCENT GORSKI/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Mercedes-Benz Financial Services USA LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2020 Mercedes Benz ("Vehicle"). Doc. #13. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.* Jaswinder Singh ("Debtor") did not oppose.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved

without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor is 7 payments past due in the combined amount of \$6,901.23, plus late fees and NSF fees of \$310.74. Doc. #13.

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

The 14-day stay of Rule 4001(a)(3) will be ordered waived because Debtor has failed to make pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

7. [23-10981](#)-B-7 **IN RE: ALBERT/SOLVEIG SWAFFORD**
[JCW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-16-2023 [\[21\]](#)

WELLS FARGO BANK, N.A./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JENNIFER WONG/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.

Wells Fargo Bank N.A. ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at 2802 Sothebys Court, Bakersfield, California 93311 ("Property"). Doc. #21. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). Id. Albert Reed Swafford and Solveig Christine Swafford (collectively "Debtors") did not oppose.

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

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtors have failed to make at least 10 complete pre-petition payments. The Movant has produced evidence that Debtors are delinquent at least \$27,592.80 and the entire balance of \$941,764.60 due. Docs. #23, #25.

The court declines finding that Debtors do not have any equity in the Property. Although this is a chapter 7 case and the Property is not necessary for an effective reorganization, the moving papers indicate that Debtors have approximately \$8,235.00 in equity. Doc. #23. Nevertheless, relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because Debtors has failed to make pre- and post-petition payments to Movant.

8. [23-11081](#)-B-7 **IN RE: CHRISTY MCLEAN**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-27-2023 [[11](#)]

MERCEDES-BENZ VEHICLE TRUST/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

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

Mercedes-Benz Vehicle Trust as successor in interest to Daimler Trust ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2022 Mercedes-Benz ("Vehicle"). Doc. #11. Christy McLean ("Debtor") did not oppose.

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

This motion relates to an executory contract or lease of personal property. The case was filed on May 19, 2023, and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to § 365(p)(1), the leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law. The trustee has not moved to assume the subject lease and the lease was not listed in the Debtor's *Statement of Intention*, which instead indicates that Debtor intends to surrender the Vehicle. Doc. #1.

Accordingly, this motion will be DENIED AS MOOT. Movant may submit an order denying the motion and confirming that the automatic stay has already terminated on the grounds set forth above. No other relief is granted.

10:30 AM

1. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-61](#)

MOTION TO SELL
7-27-2023 [[729](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Movant withdrew the motion. Doc. #764. Accordingly, this motion will be dropped and taken off calendar pursuant to the withdrawal.

11:00 AM

1. [22-12102](#)-B-13 **IN RE: ALAN BABB**
[23-1025](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
5-15-2023 [[1](#)]

BABB V. SN SERVICING CORPORATION ET AL
WILLIAM EDWARDS/ATTY. FOR PL.
DISMISSED 7-27-23

NO RULING.

On July 27, 2023, the court entered an order dismissing this adversary proceeding without prejudice and without leave to amend as to defendants SN Servicing Corporation, Prestige Default Services, LLC, and U.S. Bank Trust National Association as Trustee of the Chalet Series IV Trust. Doc. #16.

This status conference will be called and proceed as scheduled to inquire about the status of defendants Cobra 28 No 8 LP, a California Limited Partnership, and DOES 1 to 20. The court may issue an order to show cause why this adversary proceeding should not be dismissed for failure to serve the remaining defendants.

2. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[23-1008](#) [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
6-16-2023 [[29](#)]

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

NO RULING.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade worked on this matter prior to accepting that position but he is now screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

3. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[18-1006](#)

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

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

NO RULING.

The court is in receipt of the parties' joint status report dated August 1, 2023. Doc. #288. This further scheduling conference will be called and proceed as scheduled.

4. [22-11149](#)-B-7 **IN RE: PAULO VILLAREAL-SALINAS**
[22-1024](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT
10-10-2022 [\[1\]](#)

MEDINA V. VILLAREAL-SALINAS, JR
D. GARDNER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 6, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

On July 21, 2023, the court appointed a dispute resolution advocate and assigned this case to the Bankruptcy Dispute Resolution Program. Doc. #29. Accordingly, this pre-trial conference will be CONTINUED to September 6, 2023 at 11:00 a.m. The plaintiff shall file a joint or unilateral status report not later than seven days before the date of the continued pre-trial conference.

11:30 AM

1. [23-10829](#)-B-7 **IN RE: LUIS PADILLA REYES**

REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL SERVICES,
INC.
6-1-2023 [\[34\]](#)

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. [23-10633](#)-B-7 **IN RE: LETICIA RUBIO**

REAFFIRMATION AGREEMENT WITH ONEMAIN FINANCIAL GROUP, LLC
7-7-2023 [\[21\]](#)

R. BELL/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

A Reaffirmation Agreement between Leticia Rubio ("Debtor") and Onemain Financial Group, LLC ("Onemain") for a 2013 Honda Accord was filed on July 7, 2023. Doc. # 21.

Fed. R. Bankr. P. ("Rule") 4008(a) requires a reaffirmation agreement to be filed no later than 60 days after the first date set for the meeting of creditors. The court is permitted to enlarge the time for filing a reaffirmation agreement "at any time." However, 11 U.S.C. § 524(c)(1) requires the agreement to be made prior to entry of discharge. See *In re Golladay*, 391 B.R. 417, 422 at n.1 (Bankr. C.D. Ill. 2008) ("[W]here it can be shown that the reaffirmation agreement was 'made,' i.e. signed before the granting of the discharge, then the reaffirmation agreement may be 'filed' after the granting of the discharge.") (emphasis in original), quoting *In re Davis*, 273 B.R. 152, 153 (Bankr. S.D. Ohio 2001); *In re Lucious*, 2012 Bankr. LEXIS 3572 (Bankr. N.D. Ohio Aug. 1, 2012).

In this case, the meeting of creditors was set for May 5, 2023, and therefore, the deadline to file the reaffirmation agreement was July

5, 2023. Debtor's discharge was entered on July 10, 2023. Doc. #20. However, Debtor signed the reaffirmation on June 28, 2023. Doc. #21. Onemain and Debtor's attorney signed the reaffirmation agreement on June 20, 2023 and June 30, 2023, respectively. *Id.* The reaffirmation agreement was not filed until July 7, 2023. *Id.* Since Debtor entered into the reaffirmation agreement before discharge was entered, the court will use its discretion under Rule 4008(a) to enlarge the time to file the reaffirmation agreement to July 8, 2023.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when entering into the agreement. The form of the reaffirmation agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtor's attorney with the appropriate attestations. Doc. #21. Pursuant to § 524(d), the court need not approve the agreement.