



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, August 10, 2023
Department A – 510 19th Street
Bakersfield, California**

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

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

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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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.

1. [23-11520](#)-A-13 **IN RE: THEDFORD JONES**
[FW-1](#)

MOTION TO EXTEND AUTOMATIC STAY
7-17-2023 [\[7\]](#)

THEDFORD JONES/MV
GABRIEL WADDELL/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Debtor Thedford Lewis Jones, Jr. ("Debtor"), the debtor in this chapter 13 case, moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B), and continuing the automatic stay provided under 11 U.S.C. § 362(a) as to all creditors and parties during the pendency of this chapter 13 bankruptcy proceeding, except for Valley Strong Credit Union's ability to dispose of a 2021 Mercedes-Benz E Class (the "Vehicle") that Valley Strong Credit Union repossessed prior to the filing of this bankruptcy case. Doc. #7.

Debtor commenced this bankruptcy case on July 14, 2023. Doc. #1. Debtor had a chapter 13 case, see Case No. 22-11116, pending within the preceding one-year period that was dismissed (the "Prior Case"). The Prior Case was filed on June 30, 2022 and dismissed on January 27, 2023 for Debtor's failure to confirm a plan. See Case No. 22-11116, Doc. #124; Order, Doc. #125. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtor filed this case on July 14, 2023. The automatic stay will terminate in the present case on August 13, 2023.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]" 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was filed not in good faith if the debtor: (1) filed more than one prior case in the preceding year; (2) failed to file or amend the petition or other documents without

substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

In this case, the presumption that this bankruptcy case was filed not in good faith arises under 11 U.S.C. § 362(c)(3)(C)(i)(I) because Debtor filed more than one prior case in the preceding year. A review of the court's docket in the Prior Case disclosed a chapter 13 plan was not confirmed, the chapter 13 trustee filed a motion to dismiss on December 19, 2022, and the court dismissed the Prior Case based on Debtor's failure to confirm a plan. See Case No. 22-11116. A stay relief motion was filed in the Prior Case by creditor Valley Strong Credit Union relating to the Vehicle and was granted. Decl. of Thedford Lewis Jones, Jr., Doc. #9. Valley Strong Credit Union repossessed the Vehicle prior to the filing of this bankruptcy case. Id. Debtor requests the court continue the automatic stay to all creditors, except for Valley Strong Credit Union's ability to dispose of the repossessed Vehicle. Id. It also is possible that the presumption that this bankruptcy case was filed not in good faith arises in this case under § 362(c)(3)(C)(i)(III) were the court to find no substantial change in the financial or personal affairs of Debtor.

The presumption that this bankruptcy case was filed not in good faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). 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. 1795 (2019).

In support of this motion to extend the automatic stay, Debtor declares that he filed his Prior Case with an attorney outside of the Eastern District of California and his bankruptcy case required significant litigation relating to plan confirmation and claim objections. Jones Decl., Doc. #9. Before Debtor's chapter 13 plan was confirmed in the Prior Case, Debtor's attorney in the Prior Case informed Debtor that the attorney was no longer willing to continue as counsel for Debtor. Id. Debtor's Prior Case was dismissed after Debtor's prior attorney filed a motion to withdraw, which was granted. Id. Debtor has hired new bankruptcy counsel for this case, who is aware of the likelihood of litigation. Id. Further, Debtor has decided to surrender the trailer Debtor previously proposed to be paid through the plan. Id. Debtor has filed this case to pay his priority taxes and domestic support arrearage. Id. Debtor testifies that he will be able to make plan payments going forward. Id. Debtor filed a proposed plan in this case on July 14, 2023. Doc. #3. Debtor's Schedule J lists a monthly net income of \$5,496.72, and Debtor proposes to apply \$5,535.00 to plan payments in this case. Schedule J, Doc. #1; Plan, Doc. #3.

The court is inclined to GRANT Debtor's motion. The issue presented by Debtor's motion is whether Debtor has rebutted by clear and convincing evidence the presumption that this bankruptcy case was filed not in good faith. That presumption arises either from the dismissal of Debtor's Prior Case because Debtor filed more than one prior case in the preceding year, see 11 U.S.C. § 362(c)(3)(C)(i)(I), or from the court finding no substantial change in Debtor's financial or personal affairs, see 11 U.S.C. § 362(c)(3)(C)(i)(III).

The court is inclined to find that Debtor has overcome by clear and convincing evidence the presumption that this bankruptcy case was filed not in good faith. In the Prior Case, Debtor failed to confirm a plan because his case required significant litigation and his attorney in the Prior Case withdrew his representation of Debtor. Debtor testifies that he has hired new bankruptcy counsel for this bankruptcy case who is aware of the likelihood of significant litigation in this case. Further, Debtor's personal and financial affairs have changed since the Prior Case was dismissed and Debtor testifies that he will be able to make plan payments in this case. Debtor filed this case in order to pay priority taxes and domestic support arrearage claims in full. Moreover, the court recognizes that Debtor has had a substantial change in circumstances because the Vehicle has been repossessed and Debtor has decided to surrender the trailer Debtor proposed to be paid through the plan in the Prior Case.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay, for all purposes as to those parties that received notice of Debtor's motion other than as to creditor Valley Strong Credit Union's ability to dispose of the repossessed Vehicle, unless the automatic stay is terminated by further order of the court. If opposition is presented at the hearing, the court will consider the opposition and whether a further hearing is necessary.

2. [23-10723](#)-A-13 **IN RE: RAMONA TAPIA**
[MHM-2](#)

MOTION TO DISMISS CASE
6-21-2023 [\[54\]](#)

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. #63. Therefore, this motion will be DENIED AS MOOT.

3. [21-12224](#)-A-13 **IN RE: LACEY FREEMAN**
[RSW-2](#)

MOTION TO MODIFY PLAN
6-19-2023 [\[41\]](#)

LACEY FREEMAN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). While the chapter 13 trustee filed a timely opposition to the motion to modify, that timely opposition was subsequently withdrawn. Doc. ##49, 51. 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.

4. [23-11524](#)-A-13 **IN RE: MARIA LOPEZ**
[JBC-1](#)

MOTION TO EXTEND AUTOMATIC STAY
7-19-2023 [\[10\]](#)

MARIA LOPEZ/MV
JAMES CANALEZ/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Maria Alexandra Lopez ("Debtor"), the debtor in this chapter 13 case, moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B), and continuing the automatic stay provided under 11 U.S.C. § 362(a) as to all creditors and parties during the pendency of this chapter 13 bankruptcy proceeding. Doc. #10.

Debtor commenced this bankruptcy case on July 14, 2023. Doc. #1; Decl. of Maria Alexandra Lopez at ¶ 2, Doc. #13. Debtor had a chapter 13 case pending within the preceding one-year period, see Case No. 23-10989, that was dismissed (the "Prior Case"). The Prior Case was filed on May 9, 2023, and dismissed on May 30, 2023, for Debtor's failure to file timely the remaining schedules and chapter 13 plan. See Case No. Case No. 23-10989, Doc. ##9, 11; Lopez Decl. at ¶ 4, Doc. #13. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy

case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtor filed this case on July 14, 2023. Doc. #1. The automatic stay will terminate in the present case on August 13, 2023.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]" 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was filed not in good faith if the debtor: (1) filed more than one prior case in the preceding year; (2) failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

In this case, the presumption that this bankruptcy case was filed not in good faith arises under 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa) because Debtor failed to file remaining schedules and a chapter 13 plan, and did so without substantial excuse. Lopez Decl. at ¶ 4-5, Doc. #13. A review of the court's docket in the Prior Case disclosed a Notice of Incomplete Filing and Notice of Intent to Dismiss Case if Documents Are Not Timely Filed and an Order Dismissing Case for Failure to Timely File Documents. See Case No. 23-10989, Doc. #9, 11. Debtor acknowledges that the Prior Case was dismissed for failure to file timely documents. Lopez Decl. at ¶ 4-5, Doc. #13. No motions for relief from stay were filed in the Prior Case. See Case No. 23-10989.

The presumption that this bankruptcy case was filed not in good faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). 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. 1795 (2019).

In support of this motion to extend the automatic stay, Debtor declares that the documents in the Prior Case were not filed because Debtor filed the Prior Case without the assistance of bankruptcy counsel and did not know or understand as a pro per debtor how to complete her chapter 13 petition, statements and schedules or compose and file a chapter 13 plan before the dismissal date. Lopez Decl. at ¶ 5, Doc. #13. Debtor declares her circumstances have changed because Debtor has retained the services of an attorney, who has explained Debtor's rights and responsibilities under chapter 13 and will assist Debtor through her second chapter 13 bankruptcy case. Id. at ¶ 14. Debtor has proposed a chapter 13 plan that will pay 14% of what is owed to all unsecured creditors. Id. at ¶ 8.

The court is inclined to find that Debtor has overcome by clear and convincing evidence the presumption that this bankruptcy case was filed not in good faith.

Debtor's previous circumstances of being a pro per debtor in the Prior Case rebut the presumption of bad faith that arose from Debtor's failure to file missing documents in the Prior Case and display that Debtor's petition commencing this chapter 13 case was filed in good faith. Moreover, the court recognizes that Debtor has had a substantial change in circumstances because Debtor has now retained an attorney to assist Debtor in the second bankruptcy case.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes only as to those parties served with notice of Debtor's motion, unless terminated by further order of the court. If opposition is presented at the hearing, the court will consider the opposition and whether a further hearing is necessary.

5. [23-10428](#)-A-13 **IN RE: THOMAS RODRIGUEZ**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-30-2023 [\[28\]](#)

THOMAS RODRIGUEZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

6. [23-11029](#)-A-13 **IN RE: JITMA MANGOHI**

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND SOCIETY, FSB
7-5-2023 [\[19\]](#)

WILMINGTON SAVINGS FUND SOCIETY, FSB/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
KELLI BROWN/ATTY. FOR MV.
WITHDRAWN

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 plan on August 7, 2023.
Doc. #24.

7. [23-10934](#)-A-13 **IN RE: DANIEL JONES**
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT CORPORATION
6-1-2023 [\[17\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
JONATHAN VAKNIN/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

NO RULING.

No order confirming plan was uploaded by August 3, 2023. At the hearing, counsel for the debtor shall be prepared to explain to the court why a status report was not filed and served by August 3, 2023 as required by this court's order filed on July 5, 2023. Doc. #25.

8. [22-11735](#)-A-13 **IN RE: JOEL/LISA AVILA**
[MHM-1](#)

MOTION TO DISMISS CASE
6-16-2023 [\[24\]](#)

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

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because the debtor have failed to make all payments due under the plan (11 U.S.C. § 1307(c)(6)). Doc. #24. The debtors are delinquent in the amount of \$8,079.99. Id. Before this hearing, another payment in the amount of \$4,181.31 will also come due. Id. The debtors 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 debtors 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 debtors' Schedules A/B and D shows that the debtors' real property and most of the debtors' personal property is encumbered. Doc. #10. The primary non-exempt personal property consists of estimated tax refunds for the debtors' 2022 taxes. Id. Because there appears to be minimal non-exempt equity available for the benefit of unsecured creditors, the court determines that dismissal, rather than conversion, is appropriate.

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

9. [23-11048](#)-A-13 **IN RE: TIMOTHY CRANE**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-21-2023 [\[21\]](#)

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

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

DISPOSITION: Sustained.

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

This motion was set for hearing on 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.

Michael H. Meyer ("Trustee"), the chapter 13 trustee in the bankruptcy case of Timothy Philip Crane ("Debtor"), objects to Debtor's exemption of 100% of a pending personal injury lawsuit under California Code of Civil Procedure ("C.C.P.") § 704.140 without a showing that any proceeds are necessary for the support of Debtor. Tr.'s Obj., Doc. #21; see Schedule C, Doc. #19. Trustee also objects to Debtor's claim of a \$7,000.00 exemption in Debtor's automotive mechanic's tools (the "Tools") C.C.P. § 704.060. Id.

"[T]he debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure §§ [704.060 and 704.140] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016) (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation.").

Pursuant to C.C.P. § 704.140(b), "an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor." To claim an exemption under section 704.140(b), the debtor must satisfy two prongs: "First, the funds sought to be exempted must arise as a result of 'personal injury.' Second, the funds are only exempt 'to the extent necessary for the support' of the [d]ebtor." Sylvester v. Hafif (In re Sylvester), 220 B.R. 89, 91 (B.A.P. 9th Cir. 1998).

Trustee objects to Debtor's exemption of 100% of a pending personal injury lawsuit because Debtor has not shown that any proceeds of the pending personal injury lawsuit are necessary for the support of Debtor, as required by the plain language of C.C.P. § 704.140(b). See, e.g., In re Gose, 308 B.R. 41, 48 (B.A.P. 9th Cir. 2004). Trustee contends that since the plan is not confirmed, the personal injury lawsuit remains property of the bankruptcy estate and it is Debtor's burden to demonstrate any such proceeds are necessary for the support of Debtor. Tr.'s Obj., Doc. #21.

The court finds that Debtor has not met his burden in showing that all proceeds of the personal injury lawsuit are necessary for the support of Debtor as required by C.C.P. § 704.140, and Trustee's objection to Debtor's exemption of 100% of a pending personal injury lawsuit is sustained.

Turning to Trustee second objection, Debtor filed his chapter 13 case on May 17, 2023. At the time of filing, C.C.P. § 704.060 allowed for a debtor to exempt "[t]ools, implements, instruments . . . and other personal property" if the "aggregate equity there in does not exceed" \$9,525 and "if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood." C.C.P. § 704.060(a)(1). "[T]he evident purpose and policy of the exemption is to protect the basic tools and utensils necessary to aid the debtor in continuing in his means of livelihood." Kono v. Meeker, 196 Cal. App. 4th 81, 89 (2011).

Trustee objects to Debtor's exemption of the Tools on the grounds that Debtor's sole source of income is from "boarders/friends" in the amount of \$1,175.00. Tr.'s Obj., Doc. #21; see Schedule I, Doc. #19. Further, Trustee objects on the basis that Debtor "will return to work when able. Have applied for disability." Id. According to Statement of Financial Affairs No. 4, Debtor has received no income for employment or operating a business during this year or the two previous calendar years. Doc. #19. Trustee argues that if Debtor has not worked in the last 2.5 years, and Debtor will only return to work if able, then the Tools are not actually used by Debtor in the exercise of the trade, business, or profession by which Debtor earns a livelihood. Tr.'s Obj., Doc. #21.

The court finds that Debtor has not met his burden of showing that the Tools are reasonably necessary to and actually used by Debtor in the exercise of Debtor's trade. Therefore, the Tools may not be exempted under C.C.P. § 704.060.

Accordingly, Trustee's objections are SUSTAINED.

10. [23-10168](#)-A-13 **IN RE: ROBERT IRVIN**

OBJECTION TO CLAIM OF THE BANK OF NEW YORK MELLON TRUSTEE, CLAIM NUMBER 3
7-11-2023 [\[79\]](#)

ROBERT IRVIN/MV

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

This matter is OVERRULED WITHOUT PREJUDICE for improper notice.

Notice by mail of this objection to claim was sent on July 10, 2023, with a hearing date set for August 10, 2023. Since the objection to claim was set for hearing on less than 44 days' notice, the objection to claim is governed by Local Rule of Practice ("LBR") 3007-1(b)(2). Pursuant to LBR 3007-1(b)(2), written opposition was not required, and any opposition may be raised at the hearing. However, the notice of hearing filed with the objection to claim stated that opposition must be filed and served no later than fourteen days before the hearing and that failure to file written response may result in the court granting the motion prior to the hearing. Therefore, the notice of hearing does not comply with LBR 3007-1(b)(2).

As a procedural matter, the proof of service filed with the objection to claim (Doc. #88) does not include an attachment showing the addresses to which the pleadings were served in the manner required by LBR 3007-1(c). Also, it is not clear from the certificate of service whether all of the pleadings related to the objection to claim were served or only the notice of hearing. Pursuant to Federal Rule of Bankruptcy Procedure 3007(a), the debtor needed to serve the objection to claim, notice of the hearing and all other pleadings related to the objection to claim on the party filing the proof of claim in the manner required by Federal Rule of Bankruptcy Procedure 3007(a) and LBR 3007-1(c).

As a further procedural matter, the motion and supporting documents do not comply with LBR 9004-1(c), which requires that all pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing in propria persona. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature. Here, the objection to the claim and supporting documents are not signed by the debtor who is appearing in propria persona.

As a further procedural matter, the objection to claim and supporting papers do not comply with LBR 9014-1(c). When filing an objection to claim, "a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6).

The court encourages the debtor to review the local rules to ensure compliance in future matters or those matters may be denied or overruled without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

11. [23-1018](#)-A-13 **IN RE: ROBERT IRVIN**

MOTION TO CONFIRM PLAN
7-11-2023 [\[82\]](#)

ROBERT IRVIN/MV
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

This motion was not set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). Pursuant to LBR 3015-1(d)(1), notice of the motion shall comply with Federal Rule of Bankruptcy Procedure 2002(a)(9), which requires 21 days of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires 28 days' notice of the hearing and notice that opposition must be filed 14 days prior to the hearing. In order to comply with both Federal Rule of Bankruptcy Procedure 2002(b) and LBR 9014-1(f)(1), parties in interest shall be served at least 35 days prior to the hearing. Here, notice by mail of this motion was sent July 10, 2023, with a hearing date set for August 10, 2023, which is 31 days prior to the hearing.

As a procedural matter, the proof of service filed with the motion to confirm (Doc. #87) does not include an attachment showing the addresses to which the pleadings were served. A copy of the motion, the proposed plan, the notice of hearing and any other documents filed in support of the motion must be served on all creditors. Fed. R. Bankr. P. 2002(a)(9). It is not clear from the certificate of service whether all of the pleadings related to the motion were served on all creditors.

As a further procedural matter, the motion and supporting documents do not comply with LBR 9004-1(c), which requires that all pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing in propria persona. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature. Here, the motion to confirm and supporting documents are not signed by the debtor who is appearing in propria persona.

As a further procedural matter, the motion and supporting papers do not comply with LBR 9014-1(c). "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party,

including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6).

The court encourages the debtor to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

12. [23-10168](#)-A-13 **IN RE: ROBERT IRVIN**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
3-31-2023 [\[36\]](#)

MICHAEL MEYER/MV

NO RULING.

13. [23-11183](#)-A-13 **IN RE: TOMMY FIELDS**
[ALG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-10-2023 [\[34\]](#)

ROGER ANDERSON/MV
ARNOLD GRAFF/ATTY. FOR MV.
DISMISSED 7/14/23

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 14, 2023. Doc. #50.
Therefore, this motion will be DENIED AS MOOT.

14. [23-11183](#)-A-13 **IN RE: TOMMY FIELDS**
[ALG-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY ROGER ANDERSON
7-12-2023 [\[44\]](#)

ROGER ANDERSON/MV
ARNOLD GRAFF/ATTY. FOR MV.
DISMISSED 7/14/23

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on July 14, 2023. Doc. #50.
Therefore, this objection will be OVERRULED AS MOOT.

15. [23-11183](#)-A-13 **IN RE: TOMMY FIELDS**
[MHM-1](#)

MOTION TO DISMISS CASE
7-6-2023 [\[23\]](#)

DISMISSED 7/14/23

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 14, 2023. Doc. #50.
Therefore, this motion will be DENIED AS MOOT.

16. [23-11183](#)-A-13 **IN RE: TOMMY FIELDS**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-7-2023 [\[28\]](#)

MICHAEL MEYER/MV
DISMISSED 7/14/23

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on July 14, 2023. Doc. #50.
Therefore, this objection will be OVERRULED AS MOOT.

17. [23-10796](#)-A-13 **IN RE: KARLA GARCIA**
[MHM-2](#)

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

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 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by debtor that is prejudicial to creditors. Doc. #23. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to (a) provide Trustee with any requested documents, and (b) make all payments due under the plan. Doc. #23. 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 provide Trustee with any requested documents. 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.

A review of the debtor's Schedules A/B and D shows that the debtor's real and personal property is encumbered. Doc. #10. The objection to the debtor's claimed exemption in her real property has been sustained. Doc. #30. Should the debtor choose to amend her Schedule C exemptions, there would minimal, if any, non-exempt equity available for the benefit of unsecured creditors. Therefore, the court determines that dismissal, rather than conversion, is appropriate.

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

18. [19-11598](#)-A-13 **IN RE: BRIAN/MARIA PATRICK**
[DMG-3](#)

CONTINUED MOTION TO MODIFY PLAN
4-28-2023 [[61](#)]

MARIA PATRICK/MV
D. GARDNER/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on July 17, 2023. Doc. #83.

1. [23-10905](#)-A-7 **IN RE: DANNY/SANDRA RICHARDS**
[RSW-1](#)

MOTION TO CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AND APPEAR ON
BEHALF OF DEBTOR AT 341 MEETING OF CREDITORS AS TO DEBTOR
7-11-2023 [[14](#)]

SANDRA RICHARDS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part; denied in part.

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

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). Therefore, the defaults of the non-responding
parties in interest are entered.

Sandra Kay Richards ("Movant"), the surviving spouse of joint debtor Danny
Dwight Richards ("Joint Debtor") in this chapter 7 case, requests the court
name Movant as the successor to the deceased Joint Debtor, permit the continued
administration of this chapter 7 case, and permit Movant to appear on behalf of
Joint Debtor at the section 341 meeting of creditors. Doc. #14.

Federal Rule of Bankruptcy Procedure 1016 provides that, upon the death of a
debtor in chapter 7, the estate shall be administered and the case concluded in
the same manner, so far as possible, as though the death had not occurred.
Joint Debtor died on May 8, 2023. Decl. of Sandra Kay Richards, Doc. #17;
Ex. 1, Doc. #16. Movant states that she is willing and able to perform the
tasks necessary to complete the chapter 7 bankruptcy. Richard Decl., Doc. #17.
No objections have been filed in response to this motion.

While Joint Debtor had already completed the post-petition education
requirements for entry of discharge prior to his death, Movant requests she be
allowed to appear on behalf of Joint Debtor at the section 341 meeting of
creditors, which is currently scheduled for August 18, 2023. Doc. #14.

With respect Movant's request to appear on behalf of Joint Debtor at the
section 341 meeting of creditors, the court must determine that Movant is the
personal representative of Joint Debtor's probate estate or can otherwise
represent Joint Debtor after his death under California law. In re Lucio,
251 B.R. 705, 709 (Bankr. W.D. Tex. 2000). When a person dies, "the decedent's
estate continues as a legal entity, with the authority to sue and be sued, to
administer assets, and to pay liabilities. The decedent's estate accomplishes
these matters by means of a personal representative authorized by state law to
act on behalf of the estate." Lucio, 251 B.R. at 708-09. In California, "[a]
person has no power to administer the estate until the person is appointed

personal representative and the appointment becomes effective. Appointment of a personal representative becomes effective when the person appointed is issued letters." Cal. Prob. Code § 8400. "The appointment of a personal representative for decedent is a probate-type proceeding; such proceedings are typically outside the power of the federal courts." Hassanati v. Int'l Lease Fin. Corp., 51 F. Supp. 3d 887, 896 (C.D. Cal. 2014), aff'd sub nom. Hassanati ex rel. Said v. Int'l Lease Fin. Corp., 643 F. App'x 620 (9th Cir. 2016) (quoting Sequoia Property and Equipment Ltd. Partnership v. United States, No. CV-F-97-5044-LJO, 2002 WL 32388132, at *3 (E.D. Cal. June 3, 2002)). Therefore, Movant must show she can act as Joint Debtor's personal representative under California law before the court can grant Movant's request to appear at the section 341 meeting of creditors on behalf of Joint Debtor. Movant has not made that showing in this motion.

Accordingly, Movant's application to be appointed representative of Joint Debtor's estate for the further administration of this bankruptcy case is GRANTED. Movant's request to appear at the section 341 meeting of creditors on behalf of Joint Debtor is DENIED.

2. [23-10611](#)-A-7 **IN RE: MARCELA MORENO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-27-2023 [\[31\]](#)

\$32.00 FILING FEE PAID 6/29/23

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees now due have been paid.

3. [23-11212](#)-A-7 **IN RE: JOSE SAUCEDO**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-26-2023 [\[10\]](#)

SANTANDER CONSUMER USA INC./MV
D. GARDNER/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.

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 creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be

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

The movant, Santander Consumer USA Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2018 Chevrolet Equinox (the "Vehicle"). Doc. #10.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least six complete pre- and post-petition payments. Decl. of Ashley Young, Doc. #12. Movant has produced evidence that the debtor is delinquent by at least \$3,732.72, which includes vehicle recovery fees of \$765.00. Id.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at \$18,675.00, and the debtor owes \$22,582.77. Young Decl., Doc. #12.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1. The Vehicle was surrendered to Movant pre-petition on April 24, 2023. Young Decl., Doc. #12; Doc. #10.

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

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-13-2023 [\[10\]](#)

TD BANK, N.A./MV
D. GARDNER/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.

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

The movant, TD Bank, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2018 Ram 3500 (the "Vehicle"). Doc. #10.

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 debtor has failed to make at least three complete pre- and post-petition payments. Decl. of Brenee' Johnson, Doc. #13. Movant has produced evidence that the debtor is delinquent by at least \$3,344.16, which includes late fees of \$107.88. Johnson Decl., 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. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

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

MOTION FOR COMPENSATION FOR LISA NOXON HOLDER, TRUSTEES ATTORNEY(S)
7-11-2023 [\[123\]](#)

D. GARDNER/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Lisa Noxon Holder, PC, ("Movant"), general counsel for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from March 23, 2022 through July 7, 2023. Doc. #123. Movant provided legal services valued at \$6,313.00 and requests compensation for that amount. Id. Movant requests reimbursement for expenses in the amount of \$311.26. Id. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Here, Movant's services included, without limitation: (1) analyzing, recovering, and disposing assets; (2) preparing fee and employment applications; and (3) litigating other contested matters. Decl. of Lisa Noxon Holder, Doc. #127; Ex. A, Doc. #125. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$6,313.00 and reimbursement for expenses in the amount of \$311.26. Trustee is authorized to make a combined payment of \$6,624.26, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate

is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

6. [23-10747](#)-A-7 **IN RE: JUAN PATINO**
[RSW-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
7-13-2023 [\[16\]](#)

JUAN PATINO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Federal Rule of Bankruptcy Procedure ("Rule") 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) be served "in the manner provided for service of a summons and complaint by Rule 7004." Service of the motion on Capital One Bank (USA), N.A. ("Creditor") does not satisfy Rule 7004.

Rule 7004(h) provides that service on an insured depository institution, such as Creditor, "shall be made by certified mail addressed to an officer of the institution unless" an appearance by an attorney on behalf of the institution has been entered, the court orders otherwise, or the institution waives its entitlement to service by designating an officer to receive service.

Here, the certificate of service filed in connection with this motion does not show that service of the motion was made by certified mail or addressed to an officer of Creditor. See Doc. #20. A review of the docket shows no attorney has appeared on behalf of Creditor in this bankruptcy case, and Creditor has not waived in writing Creditor's entitlement to receive service by certified mail. Accordingly, Creditor was not served properly with this motion pursuant to Rule 7004(h).

As an informative matter, the movant incorrectly completed Section 3 of the court's mandatory Certificate of Service form. In Section 3, the declarant marked that this bankruptcy case was filed under chapter 12 or 13 of the Bankruptcy Code. Doc. #20. However, this bankruptcy case was filed under chapter 7 of the Bankruptcy Code. In Section 3, the declarant should have checked the appropriate box indicating the case is one filed under chapter 7.

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

7. [23-11256](#)-A-7 **IN RE: SANDRA RODRIGUEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-23-2023 [\[13\]](#)

VINCENT QUIGG/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 6/27/23

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid.

10:30 AM

1. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
10-5-2021 [[1](#)]

IGNACIO LAZO/ATTY. FOR DBT.

NO RULING.

At the hearing, counsel for the debtor shall be prepared to explain to the court why a status report was not filed and served by August 3, 2023 as required by this court's order filed on May 5, 2023. Doc. #209.

2. [23-11623](#)-A-11 **IN RE: MATEO ENTERPRISE, INC. DBA EL MILAGRO MARKET**
[LKW-2](#)

MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE PROTECTION
8-2-2023 [[23](#)]

MATEO ENTERPRISE, INC. DBA EL MILAGRO MARKET/MV
LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

As an informative matter, the movant incorrectly completed Section 7 of the court's mandatory Certificate of Service form. Doc. #29. In Section 6, the declarant marked that service was effectuated by Rule 7004 Service and checked boxes 6A1 and 6A2. However, the declarant failed to check that service was accomplished by § 6A(2): Certified Mail in Section 7.

1. [23-10790](#)-A-7 **IN RE: SILVANO GUTIERREZ**

PRO SE REAFFIRMATION AGREEMENT WITH SCHOOLSFIRST FEDERAL CREDIT UNION
6-23-2023 [[26](#)]

RAYMOND PEREZ/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

The debtor's counsel will inform the debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. The debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. In re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Okla. 2009). The reaffirmation agreement, in the absence of a declaration by the debtor's counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable. The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.