



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B - 510 19th Street
Bakersfield, California**

Hearing Date: Wednesday, October 2, 2024

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

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

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

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

Please also note the following:

- Parties in interest and/or their attorneys may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

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

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

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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-3](#)

CONTINUED MOTION TO MODIFY PLAN
7-16-2024 [\[84\]](#)

ERIN STEVENSON/MV
MATTHEW DECAMINADA/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

ORDER: The Movant will prepare the order.

This matter was originally heard on September 4, 2024. Doc. #93.

Erin David Stevenson ("Debtor") moves for an order confirming the Modified Chapter 13 Plan dated July 16, 2024. Docs. #84, #88. Debtor's current plan was confirmed on May 17, 2024. Doc. #77.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Chapter 13 trustee Lilian G. Tsang ("Trustee") timely objected to confirmation of the modified plan. Doc. #91. In response to the objection, Debtor responded and proposed the following modifications to address Trustee's concerns, with all such amendments to be effected through language in the confirmation order:

1. Nonstandard Provision 7.01 shall be amended to say: "Debtor has paid a total of \$20,610.00 into his Chapter 13 Plan through July 2024. Any and all plan delinquencies are suspended through July 2024."

2. Nonstandard Provision 7.02 shall be amended to say:
"Beginning August 2024, the plan payment shall be \$2,488.78 for the remainder of the plan."
3. The proposed treatment of Karpe Real Estate Center in Class 2 will be stricken. Language will be added to the Nonstandard Provisions of the confirmation order stating:
"All missed post-petition payments due to Karpe Real Estate Center shall be paid by month 60."

Doc. #96. On September 25, 2024, the Trustee withdrew her objection.
Doc. #98. With all objections resolved, this motion will be GRANTED, and the 60-month plan will be confirmed subject to the following modifications:

1. The monthly plan payment will be \$2,488.78 for the remaining life of the plan.
2. The post-petition deficiency on mortgage payments to Karpe Real Estate Center shall be cured by the Debtor by month 60.
3. The plan is otherwise unchanged.

Debtor avers that this modification is necessary because income is dependent on his non-filing spouse's disability payments which lapsed temporarily but have since resumed and because Debtor suffered a heart attack that prevented him from earning income. Doc. #86.

2. [24-12003](#)-B-13 **IN RE: LYNETTE LISTER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-23-2024 [\[21\]](#)

\$79.00 INSTALLMENT PAID 8/29/24

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

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

If the installment fees due at the time of hearing are paid before the hearing, the order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

3. [24-12003](#)-B-13 **IN RE: LYNETTE LISTER**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
9-5-2024 [\[29\]](#)

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

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

DISPOSITION: Continued to November 6, 2024, at 9:00 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Lynette Lister ("Debtor") on August 5, 2024, on the following basis:

1. The Trustee has not concluded the Meeting of Creditors as Debtor has failed to provide various required documents. The continued meeting was held on September 17, 2024, but was adjourned without being concluded. The Meeting of Creditors was again continued, this time to October 8, 2024, at 2:00 p.m. The Trustee may supplement if Trustee becomes aware of further issues regarding Confirmation.
2. Debtor's plan is not feasible as her plan is blank and unsigned.

Doc. #29.

This objection will be CONTINUED to November 6, 2024. at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtor shall file and serve a written response to the Objection not later than **14 days before the hearing**. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Any reply shall be served no later than **7 days before the hearing**.

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 **7 days before the hearing**. 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.

4. [24-12003](#)-B-13 **IN RE: LYNETTE LISTER**
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR SANTANDER
CONSUMER USA INC.
8-30-2024 [\[25\]](#)

SANTANDER CONSUMER USA INC./MV
SHERYL ITH/ATTY. FOR MV.

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

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

DISPOSITION: Continued to November 6, 2024, at 9:00 a.m.

ORDER: The court will issue an order.

Creditor Santander Consumer USA Inc. ("Santander") objects to confirmation of the *Chapter 13 Plan* filed by Lynette Lister ("Debtor") on August 5, 2024, on the following basis:

1. The Plan does not provide for treatment of Santander's Class 1 claim. Moreover, Santander's claim is not a Class 1 claim as it will mature prior to the completion of the 60-month plan.
2. The Plan is incomplete.
3. The Plan is not feasible as Debtor's Schedule I&J reflect a negative net income.
4. The Plan was not filed in good faith. This is the *pro se* Debtor's second case filed within a four-month period, and her prior case was dismissed because her filings were substantially incomplete. Santander requests dismissal of the case and imposition of a 180-day bar to re-filing pursuant to 11 U.S.C. § 109(g).

Doc. #29.

This objection will be CONTINUED to November 6, 2024. at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtor shall file and serve a written response to the Objection not later than **14 days before the hearing**. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Any reply shall be served no later than **7 days before the hearing**.

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 **7 days before the hearing**. 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.

Either Movant or the Chapter 13 Trustee may request dismissal by a properly noticed hearing and seek an order imposing a refiling bar for cause under § 349(a).

5. [19-13907](#)-B-13 **IN RE: JAVIER JAIME AND LILIANA LUIS**
[LGT-1](#)

MOTION TO DISMISS CASE
9-4-2024 [\[166\]](#)

LILIAN TSANG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
LILIAN TSANG/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will be called as scheduled.

DISPOSITION: Granted or denied without prejudice.

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

Chapter 13 trustee Lilian G. Tsang ("Trustee") moves to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay by the debtor that is prejudicial to creditors and failure to make all payments due under the plan and termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan. [11 U.S.C. §1307(c)(8)]. Doc. #166. As of September 4, 2024, Javier Osvaldo Jaime and Liliana Aide Luis ("Debtors") have failed to make all payments due under the plan and Debtors are delinquent \$12,204.63. Doc. #168.

Debtors timely filed written opposition indicating that they will pay \$12,204.63 to complete their Plan prior to the hearing. Doc. #171.

This matter will be called as scheduled to inquire whether Debtors have cured the delinquency and paid off their plan. If so, this motion may be DENIED WITHOUT PREJUDICE. Otherwise, the motion may be GRANTED, and the case dismissed.

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

of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtor are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay that is prejudicial to creditors and failure to make all payments due under the plan.

The Trustee has reviewed Debtors' Schedules A/B and D and they show that Debtors' significant assets, vehicles, and real property are over encumbered. Debtors claim exemptions in the remaining assets. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate. Doc. #166.

As noted above, Debtors intend to make a payment of \$12,204.63 prior to October 2, 2024, hearing to cure the delinquency. This matter will be called as scheduled to inquire whether Debtor has cured the delinquency. If so, this motion may be DENIED WITHOUT PREJUDICE. Otherwise, the motion may be GRANTED, and the case dismissed.

6. [24-11213](#)-B-13 **IN RE: JEANNE CHRISTENSEN**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
7-22-2024 [\[19\]](#)

LILIAN TSANG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained or Continued.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation determined at the hearing.

This matter was originally set for hearing on September 4, 2024.
Doc. #24.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the Chapter 13 Plan filed by Jeanne Louise Christensen ("Debtor") on May 3, 2024, on the following basis:

1. Debtor's Schedule I & J filed at the inception of the case indicate that Debtor's only income came from Social Security. However, Debtor testified that she has since obtained employment. Trustee requests copies of Debtor's pay advices and that Debtor amend her Schedule I & J, as Trustee cannot determine feasibility otherwise.
2. Debtor has exempted real property which she later testified is in a Trust. Trustee has requested copies of all trust documents and cannot determine the liquidation value without them.

Doc. #19. On September 19, 2024, Debtor filed a Response stating as follows:

1. The job which Debtor alluded to during the 341 meeting did not come to fruition, but she has since obtained new employment. Her income is deposited directly into her bank account, and the Trustee has been provided with bank statements. An Amended Schedule I & J is forthcoming.
2. A copy of the trust documents has been provided to the Trustee.

Doc. #34. On September 25, 2024, the Trustee filed a Reply stating:

1. Trustee received Debtor's bank statement from California Bank & Trust for August 2024. The only deposit showing for the month of August is \$12,000.00. Amended Schedules I and J have not been filed for the change in budget, and no further information has been offered by the Debtor. Therefore, the Trustee cannot recommend confirmation at this time.
2. Trustee has received the requested trust documents and is satisfied with the exemption.

Doc. #38. On September 30, 2024, Debtors filed an Amended Schedule I&J. Doc. #40. Unless this Objection is withdrawn, this matter will proceed as scheduled to determine if the Debtor has provided bank statements and that the Amended Schedule I&J to resolve the Trustee's concerns. If so, this Objection will be OVERRULED. If not, the Objection may be SUSTAINED, or this matter may be continued.

7. [24-11213](#)-B-13 **IN RE: JEANNE CHRISTENSEN**
[LGT-2](#)

MOTION TO DISMISS CASE
9-4-2024 [\[26\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will be called as scheduled.

DISPOSITION: Granted or denied without prejudice.

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

Chapter 13 trustee Lilian G. Tsang ("Trustee") moves to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay by the debtor that is prejudicial to creditors and failure to make all payments due under the plan. Doc. #26. As of September 4, 2024, Jeanne Louise Christensen ("Debtor") has failed to make all payments due under the plan and Debtor is delinquent \$11,025.00. Doc. #28. Before the hearing on this motion, an additional payment of \$3,675.00 will become due on September 25, 2024, due before the hearing.

Debtor timely filed written response. Doc. #36. Debtor avers that she has paid the June and July plan payments. Debtor also indicates that the August and September payments will be paid prior to the hearing. *Id.*

This matter will be called as scheduled to inquire whether Debtor has cured the delinquency. If so, this motion may be DENIED WITHOUT PREJUDICE. Otherwise, the motion may be GRANTED, and the case dismissed.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtor are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay that is prejudicial to creditors and failure to make all payments due under the plan.

The Trustee's review of Debtor's Schedules A/B and D show that Debtor's significant assets, vehicles, and real property, are over encumbered. Debtor claims exemptions in the remaining assets. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate. Doc. #26.

As noted above, Debtor has paid the June and July payments and will pay the August and September payments prior to the hearing. This matter will be called as scheduled to inquire whether Debtor has cured the delinquency. If so, this motion may be DENIED WITHOUT PREJUDICE. Otherwise, the motion may be GRANTED, and the case dismissed.

8. [24-11521](#)-B-13 **IN RE: MANUEL HERRERA AND SUSAN VILLA-HERRERA**
[RSW-1](#)

MOTION TO INCUR DEBT
9-12-2024 [\[37\]](#)

SUSAN VILLA-HERRERA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will prepare the order

Manuel Herrera and Susan Villa-Herrera ("Debtors") ask the court for permission to incur additional debt for the purchase of a new vehicle. Doc. #37.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2). Ordinarily, this would mean that the matter would proceed as scheduled with any opposition presented at the hearing. However, because the motion facially fails to provide sufficient evidence to support the motion even in the absence of any opposition at the hearing, the court will DENY this motion without prejudice for the reasons outlined below.

LBR 3015-1(h)(1)(A) allows the debtor, with court approval, to finance the purchase of a motor vehicle if written consent of the chapter 13 trustee is filed with or as part of the motion. The trustee's approval is a certification to the court that: (i) all chapter 13 plan payments are current; (ii) the chapter 13 plan is not in default; (iii) the debtor has demonstrated an ability to pay all future plan payments, projected living expenses, and the new debt; (iv) the new debt is a single loan incurred to purchase a vehicle that is reasonably necessary for the maintenance or support of the debtor, or necessary for the continuation, preservation, and operation of the debtor's business; (v) the only security for the new debt will be the vehicle purchased by debtor; and (vi) the new debt does not exceed \$20,000.00.

If the trustee will not give consent, as is the case here, the debtors may still seek court approval under LBR 3015-1(h)(1)(E) by filing and serving a motion on the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1, which Debtors have done.

However, among the LBR 3015-1(h)(1)(A) requirements listed above is that the debtor has demonstrated that "the new debt is a single loan incurred to purchase a vehicle that is reasonably necessary for the maintenance or support of the debtor, or necessary for the continuation, preservation, and operation of the debtor's business." Here, the sparse motion consisting of only five paragraphs is not accompanied by any supporting exhibits. It is supported by the

Declaration of Susan Herrera which the motion incorporates by reference. Docs. #37, #39.

Unfortunately, Ms. Herrera's Declaration is also short on details. The Debtors' *Schedule A/B* reflects that they have two vehicles that appear to be in good working order in addition to the leased 2021 Ford Explorer at issue here. Doc. #29 (*Sched. A/B*). Debtors claim as dependents two sons (aged 15 and 20), Ms. Herrera's sister (age 38), and Ms. Herrera's mother (aged 80). Doc. #11 (*Schedule J*). The Declaration does not state who would be driving the new vehicle if the motion to incur debt were approved. See Doc. #39.

Moreover, the Declaration and the other moving papers are silent as to the total amount of the loan, the interest rate, who the lender is, and the duration of the loan. *Id.* Ms. Herrera declares that "a relative" will provide money for a down payment for the vehicle, but the Declaration does not identify the relative, let alone include any evidence about this arrangement. *Id.* Is there a Note of some kind? Will interest be charged? Will there even be a written loan agreement or a handshake deal? The Declaration is silent on these matters. To the extent that the Declaration posits an informal loan agreement between Debtors and an unidentified relative, it is inadmissible hearsay and completely unpersuasive.

Ms. Herrera declares that the payment for the new vehicle will be "about" \$500.00. Doc. #39. Setting aside the vagueness of saying "about \$500.00," the monthly payment amount alone is inadequate to support the motion in the absence of any indication of what the total indebtedness will be or of the total number of months the loan must be paid back. *Id.*

In view of the evidence put forth by Debtors, or more accurately the lack thereof, the court finds that debtors have failed to show that the unidentified vehicle for which a loan in an undetermined amount with undetermined terms is reasonably necessary for the maintenance or support of Debtors' household. The absence of any meaningful evidence about the vehicle or the terms of either the car loan itself or the "down payment" loan to be made by an unidentified relative make it impossible for the court to grant this motion. Accordingly, the motion to incur new debt is DENIED WITHOUT PREJUDICE. Debtors are free to file a new motion which provides more information to inform the court's judgment.

9. [24-11525](#)-B-13 **IN RE: BARBARA CHRISMAN**
[LGT-1](#)

MOTION TO DISMISS CASE
8-19-2024 [\[17\]](#)

LILIAN TSANG/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
WITHDRAWN 9/19/24

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

DISPOSITION: Withdrawn.

No order is required.

On September 19, 2024, the Trustee withdrew the Motion to Dismiss.
Doc. #30. Accordingly, this motion is WITHDRAWN.

10. [24-11035](#)-B-13 **IN RE: MANUEL GOMEZ**
[LGT-1](#)

MOTION TO DISMISS CASE
8-29-2024 [\[34\]](#)

NIMA VOKSHORI/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

The chapter 13 trustee asks the court to dismiss this case under 11
U.S.C. § 1307(c)(1) for unreasonable delay by Manuel Guzman Gomez
("Debtor") that is prejudicial to creditors and 11 U.S.C.
§ 1307(c)(4) Debtor's failure to commence making plan payments. Doc.
#34. 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 amount 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.

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)), including but not limited to the following:

1. Debtor failed to appear and testify at the initial 341 Meeting of Creditors on June 04, 2024 and the continued 341 Meeting of Creditors on August 06, 2024. [11 U.S.C §341] and/or F.R.B.P 4002.
2. Debtor failed to file a modified plan with notice to creditors.
3. Debtor failed to set a modified plan for hearing with notice to creditors.
4. Failed to provide the required documents to the Trustee.
5. Debtor provided an expired California Driver License.
6. Failed to accurately file schedules and/or statements. [11 U.S.C § 521] and/or F.R.B.P 1007.
7. Failed to file tax returns for the years 2020 and 2023. [11 U.S.C § 1307(e).]
8. Filed inaccurate and/or incomplete schedules.

Doc. #34. 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.

Trustee's review of Debtor's Schedules A/B and D show that Debtor's significant assets, vehicles, and real property, are fully encumbered. Debtor claims exemptions in the remaining assets. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

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

11. [24-11650](#)-B-13 **IN RE: BEDROS BALIAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-26-2024 [\[49\]](#)

\$199.00 FILING FEE PAID 8/22/24

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the \$199.00 filing fee was paid on August 22, 2024. Accordingly, this order to show cause will be VACATED.

12. [24-11650](#)-B-13 **IN RE: BEDROS BALIAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-17-2024 [\[57\]](#)

\$79.00 INSTALLMENT FILING FEE PAID 7/12/24

\$78.00 INSTALLMENT FILING FEE PAID 8/19/24

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

DISPOSITION: Concluded and dropped from the calendar.

ORDER: The court will prepare the order.

In *Item #13*, below, the court granted the Trustee's motion to dismiss this case. Accordingly, this Order to Show Cause is moot and shall be dropped from the calendar.

13. [24-11650](#)-B-13 **IN RE: BEDROS BALIAN**
 [LGT-1](#)

MOTION TO DISMISS CASE
8-14-2024 [\[43\]](#)

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

DISPOSITION: Granted.

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

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c) (1) for unreasonable delay by Bedros Boghos Balian ("Debtor") that is prejudicial to creditors and 11 U.S.C.

§ 1307(c)(4) Debtor's failure to commence making plan payments. Doc. #43. 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 amount 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.

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)), as follows:

1. Failure to file a plan as required by the Order Extending Time to File Missing Documents.
2. Failure to provide the required documents to the Trustee.
3. Failure to provide proof of Debtor's social security number, as the proof provided to Trustee was illegible.
4. Failure to accurately file schedules and/or statements. [11 U.S.C § 521] and/or F.R.B.P 1007.
5. Filing of inaccurate and/or incomplete schedules.

Doc. #43. 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.

Trustee's review of Debtor's Schedules A/B and D show that Debtor's significant assets, vehicles, and real property, are fully

encumbered. Debtor claims exemptions in the remaining assets. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

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

14. [22-10957](#)-B-13 **IN RE: BRYAN URNER AND JULIE VANDERNOOR URNER**
[LGT-1](#)

CONTINUED MOTION TO DISMISS CASE
7-11-2024 [\[55\]](#)

LILIAN TSANG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
LILIAN TSANG/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

On July 11, 2024, Lilian G. Tsang ("Trustee") filed this Motion to Dismiss Case for failure to make plan payments. Doc. #55. On August 16, 2024, Bryan Edward Urner and Julie Michelle Vandernoor Urner ("Debtors") filed their *Second Modified Plan* which Debtors averred would resolve the issue which led to the instant motion. Doc. #59, 65.

The court has confirmed the *Second Modified Plan*. See Item #15, below. Accordingly, this motion will be DENIED AS MOOT.

15. [22-10957](#)-B-13 **IN RE: BRYAN URNER AND JULIE VANDERNOOR URNER**
[RSW-2](#)

MOTION TO MODIFY PLAN
8-16-2024 [\[59\]](#)

JULIE VANDERNOOR URNER/MV
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.

Bryan Urner and Julie Vandernoor Urner ("Debtors") move for an order confirming the *Second Modified Chapter 13 Plan* dated August 16,

2024. Docs. #59, #61. Debtor's current plan was confirmed on January 27, 2023. Doc. #43.

No party has timely objected.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of any party in interest, including but not limited to creditors, the U.S. Trustee, and the case Trustee, to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

The motion requests that the confirmed plan be modified as follows:

1. The plan will remain a 60-month plan.
2. The confirmed plan states that monthly payments will be \$6,300.00. Under the proposed modified plan, Debtors shall pay a total of \$143,550.00 through August 2024, with the plan payment reduced to \$5,000.00 beginning in September 2024 and continuing through the life of the plan.
3. Section 3.06 is modified to provide that Debtors' counsel has been paid a total of \$2,400.00 and is paid in full.
4. Creditor Freedom Mortgage Corporation will be moved from Class 1 to Class 4 with Debtor making a monthly contractual payment of \$2,010.06. This creditor will be paid a total of \$49,352.01 in regular monthly mortgage payments, late fee of \$47.47, and \$27,813.70 in arrears by the Trustee through July 2024, and then direct payments by Debtors thereafter. The arrearage has been paid in full.
5. Section 3.14 is modified to provide that the Class 7 unsecured educational loans shall be paid outside the plan by the debtors directly as long-term debts beginning December 2022 at \$1,000.00 or more monthly.
6. The plan is otherwise unchanged and will continue to pay a 100% dividend to general unsecured creditors.

Compare Docs. #32 and #61.

Debtors aver that this modification is necessary because of unforeseen medical bills and other expenses. Doc. #63. Debtors further aver they will be able to afford the modified plan payments because monthly income has increased. *Id.* This is confirmed by Debtors' *Amended Schedule I & J*, which reflects a monthly net income of \$5,454.95, which is sufficient to make the monthly payment. Doc. #67.

No party in interest has objected, and the defaults of all non-responding parties in interest are entered. This motion is GRANTED.

The order shall include the docket control number of the motion, shall reference the plan by the date it was filed, and shall be approved as to form by Trustee.

16. [22-11962](#)-B-13 **IN RE: JUAN FIGUEROA**
[LGT-2](#)

MOTION TO DISMISS CASE
8-27-2024 [\[99\]](#)

LILIAN TSANG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
LILIAN TSANG/ATTY. FOR MV.
RESPONSIVE PLEADING

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 already entered on September 27, 2024. Doc. #109. The motion will be DENIED AS MOOT.

17. [19-12366](#)-B-13 **IN RE: CLINT/JUDITH HARRISON**
[LGT-1](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
8-21-2024 [\[89\]](#)

LILIAN TSANG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
LILIAN TSANG/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.

Chapter 13 trustee Lilian Tsang ("Trustee") moves for an order determining: (1) Clint and Judith Harrison ("Debtors") have cured the default with respect to the mortgage arrearage owed to Deutsche Bank secured by a deed of trust on real property located at 12501 Crown Crest Drive, Bakersfield, CA ("Property"); and (2) all post-petition payments due and owing as of July 2019 through June 2024 have been paid. Doc. #93.

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.

Federal Rule of Bankruptcy Procedure ("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.

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).

Rule 3002.1(h) provides, 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.

Here, Trustee filed a *Notice of Final Cure Payment* pursuant to Rule 3002.1(f) on July 12, 2024. Doc. #87. On August 1, 2024, Creditor filed a Response indicating that Debtors were not current on all post-petition payments and, in fact, were deficient by \$7,960.74. *See Docket entry at August 1, 2024.* This alleged deficiency purportedly consists of post-petition payments owed and outstanding for June 2024 and July 2024.

Trustee subsequently filed the instant motion to which Creditor has not responded. Doc. #89.

The motion states that:

The accounting attached to the Response shows post-petition payments due between July 1, 2019, and July 1, 2024. The Trustee was responsible for making a total of 60 payments due between July 1, 2019, and June 1, 2024. Upon comparing the ledgers provided, Deutsche Bank's accounting does not reflect the following payment made by the Trustee:

Check Number	Check Date	Check Amount	Date check cleared bank.
#8000430	7/19/2024	\$3,990.37	7/25/2024

Doc. #89. These figures are supported by a Declaration from Mai Vang, an employee of Trustee, and by Exhibits consisting of Trustee's disbursement ledger for both the post-petition mortgage payment and the pre-petition arrearage. Docs. ##91-92. According to this evidence, it appears that the Trustee's payment for month 60 of the plan in the amount of \$3,990.37 was sent to Creditor and negotiated. *Id.* While Creditor also asserts a deficiency for July 2024, that was after the completion of plan payments and not germane to question of whether Final Cure Payments have been made under 11 U.S.C. § 1322(b) (5).

The record shows that Debtor has cured the default on the loan with Creditor and is current on mortgage payments through June 2024. Trustee began disbursements on August 6, 2019, and concluded them on July 19, 2024. Doc. #92.

Trustee indicates that her office has paid a total of \$233,230.64 towards the ongoing mortgage payment, 446,904.54 towards the pre-petition arrearage claim, and \$149.5 in late fees. Doc. #92.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Pursuant to Rule 3002.1(i), Creditor and its successors in interest will be precluded from presenting any omitted information because it was required to be provided in the response to the *Notice of Final Cure* under Rule 3002.1(g). Debtors have cured the default and are current on mortgage payments through June 2024.

18. [24-11688](#)-B-13 **IN RE: LAUTALA TUPOU**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G.
TSANG
8-13-2024 [\[31\]](#)

LILIAN TSANG/MV
MATTHEW RESNIK/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

On August 13, 2024, Chapter 13 trustee Lilian G. Tsang ("Trustee") objected to confirmation of the Chapter 13 Plan filed by Lautala Onesi Tupou ("Debtor") on July 2, 2024. Doc. #31. On September 3, 2024, Debtor filed a *First Amended Chapter 13 Plan*. Doc. #39. Accordingly, this Objection is OVERRULED AS MOOT.

10:00 AM

1. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[DMG-20](#)

MOTION TO SELL
9-4-2024 [\[1266\]](#)

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better
bids, only.

DISPOSITION: Granted in part and denied in part.

ORDER: The Moving Party shall submit a proposed order
after hearing.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee" or "Seller") seeks authorization to sell the estate's interest in residential real property located at 310 Chico Street, Bakersfield, California, 93305 ("Property") to Riders Trucking, Inc. ("Prospective Buyer") for \$780,000.00 pursuant to 11 U.S.C. § 363, and subject to higher and better bids at the hearing. Doc. #1266.

Freon Logistics Trustee also requests to pay a six percent (6%) commission to the real estate brokers, split evenly between Seller's broker and Prospective Buyer's broker. *Id.* It is not abundantly clear who the brokers are, but the motion identifies Seller's broker at one point as "Ms. Vargas," and the court notes it previously authorized the appointment of one Paula Vargas of Watson Realty as a broker for Trustee regarding the sale of a different piece of property located 235 Mt. Vernon Avenue, Bakersfield, California, 93306. *See Doc. #443 (Order Authorizing Employment of Real Estate Broker)*. However, the docket reflects that no application to employ Paula Vargas, Watson Realty, or any other broker regarding the Property that is subject to the sale now before the court has ever been filed. No information about Prospective Buyer's broker is found in the moving papers.

No party in interest timely filed written opposition. This motion will be GRANTED as to the sale, and the hearing will proceed for bid solicitations only. The motion will be DENIED to the extent that it seeks authorization to pay commission to brokers who have not been authorized for employment by the court as to the Property which is the subject of the instant sale.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(2) and (a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least

14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. 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.

BACKGROUND

Freon Logistics ("Debtor") filed for Chapter 11 bankruptcy on November 8, 2022. Doc. #1. The case was converted to Chapter 7 by order of this court on December 14, 2022. Doc. #290. Trustee was appointed as Interim Trustee on that same day and became permanent trustee at the first § 341 meeting of creditors on March 8, 2023. Doc. #291; *Docket generally*. In the course of administering the estate, Trustee investigated the estate's assets, which included Property.

The Property was the subject of an adversary proceeding brought by Trustee to avoid and recover a transfer of the Property to other parties. *See generally Vetter v. Patel et al.*, 2023-01008 ("the Adversary Case"). The Adversary Case eventually settled and was dismissed by this court on July 1, 2024. Adversary Case at Doc. #74. Under the terms of the settlement, the Property was to be sold, and Blues Brothers Properties, a California LLC ("Blues Brothers") would be paid \$263,277.02, plus 1/2 of the net proceeds of the sale after payment of costs and commissions, out of escrow as reimbursement for the amount previously paid by Blues Brothers and other Defendants in the Adversary Case to remove the first deed of trust which previously encumbered the Property. Doc. #1269 (*Exhib. B - Settlement Agreement*).

Trustee has secured an offer from and executed a Purchase Agreement with Proposed Buyers to sell Property to Proposed Buyers for \$780,000.00 and now requests approval under 11 U.S.C. § 363(b) to complete the sale. Doc. #1266.

DISCUSSION

Sale of Property

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

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

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC* (*In re Old Cold LLC*), 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). There is nothing in the record suggesting that Proposed Buyers are insiders with respect to Debtor. Proposed Buyers are neither listed in the schedules nor the master address list. Docs. #1; #4.

Property is not listed in *Schedule A/B* as it had already been transferred to the Adversary Case Defendants by the filing date. In the adversary complaint, Trustee estimated the Property as having a fair market value of \$1 million. Adversary Case Doc. #1. Debtor is a corporation, so exemptions are not an issue.

Trustee entered into a contract ("Purchase Agreement") with Proposed Buyers to sell Property for \$780,000.00, subject to a number of conditions listed on the Purchase Agreement's "Test Overflow Addendum." Doc. #1269, pg. 4.

Trustee refers to a preliminary title report, but it is not included as an exhibit. Trustee avers that the Property is subject to a \$15,768.41 lien held by the Kern County Tax Collector and also the amount to which Blues Brothers is entitled under the Settlement Agreement: \$263,277.00 (the motion rounds down by two cents), plus 50% of the net proceeds of the sale after payment of costs and commissions. Doc. #1268. The Kern County Tax Collector and Blues Brothers will both be paid out of escrow. *Id.* Also, the Chapter 7 estate will be paid \$175,000.00, plus the other 50% of the net proceeds after Blues Brothers is paid. *Id.*

If sold at the proposed sale price, the proceeds from the proposed sale could be illustrated as follows:

Sale price	\$780,000.00
Commissions & Costs (Commissions currently in dispute)	(\$62,000.00)
Estimated taxes (Kern County Tax Collector)	(\$15,768.41)
Payment for indebtedness from first trust lien holder	(\$263,277.00)
Initial Distribution to Chapter 7 Estate	(\$175,000.00)
Estimated net sale proceeds	\$263,954.59

Doc. #50. After the estimated net sale proceeds are divided in two, Blues Brothers and the Chapter 7 estate will each receive approximately \$131,777.26.

The math is complicated, however, by the inclusion of \$62,000.00 for "Commissions & Costs." Of that, the court estimates that \$46,800.00 represents the 6% commission purportedly owed to the brokers even though authorization of the retention of any brokers has not been authorized vis a vis this Property.

Nevertheless, whether the court includes the cost of commissions or not, it is clear that the sale will result in liquidity for the estate. The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will pay off what is owed to the Kern County Tax Collector and to Blues Brothers and also provide liquidity that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Real Estate Brokers' Compensation

This motion affects the proposed disposition of estate assets and the Broker. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court would customarily exercise its discretion to add the brokers as a party. In this case, however, neither broker is clearly identified in the moving papers. Worse, no motion by Trustee to authorize the retention of a broker to assist in selling the Property. There is no employment order which provides a basis for compensation.

True enough, the estate's interest in the Property did not arise until after the petition was filed and avoidance litigation was pursued. But the settlement did result in the estate acquiring an interest. Under § 541(a)(3) or (7), the estate's interest in the Property is property of the estate. The proposed payment of

broker's commissions will come from property of the estate. An order authorizing the broker's retention is needed.

Accordingly, to the extent that the motion seeks to pay brokers who have not been authorized for employment, the motion is DENIED.

Overbid Procedure

Any party wishing to overbid shall, prior to the hearing, comply with the overbid procedures as outlined in the motion. See Doc. #1266, beginning on pg. 4.

Waiver of 14-day Stay

Trustee does not request waiver of the 14-day stay of Rule 6004(h), and no such relief will be granted.

Conclusion

No party in interest timely filed written opposition. This motion will be GRANTED IN PART. Trustee will be authorized: (1) to sell the Property to the prevailing bidder at the hearing, as determined at the hearing; (2) to execute all documents necessary to effectuate the sale of the Property; and (3) to pay all costs and real property taxes directly from escrow. Trustee is not authorized to pay any broker commission without further order of the court. The 14-day stay of Rule 6004(h) will not be ordered waived.

The court reminds Trustee and his counsel of the requirements of LBR 2016-1(b) should retroactive employment be requested from the court.

2. [24-12438](#)-B-7 **IN RE: DANIEL VALLE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-4-2024 [\[13\]](#)

WILLIAM EDWARDS/ATTY. FOR DBT.

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

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the \$338.00 filing fee was paid September 30, 2024. Accordingly, this order to show cause will be VACATED.

3. [24-12267](#)-B-7 **IN RE: EDWARD RANGEL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-27-2024 [\[38\]](#)

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the \$34.00 filing fee was paid on September 20, 2024. Accordingly, this order to show cause will be VACATED.

11:00 AM

1. [24-11650](#)-B-13 **IN RE: BEDROS BALIAN**
[24-1021](#) [BRK-3](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
8-27-2024 [\[11\]](#)

BALIAN V. LEWANDOWSKI
UNKNOWN TIME OF FILING/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted. Plaintiff has 14 days to amend.

ORDER: The movant will prepare the order.

Jerry Lewandowski, Defendant in the above-styled adversary proceeding ("Defendant" or "Lewandowski"), moves for dismissal under Rule 12(b)(6) and/or Rule 12(e) of the Federal Rules of Bankruptcy Procedures of the adversary complaint of Plaintiff Bedros Balian ("Plaintiff" or "Balian"). Doc. #11.

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 sustaining of the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

No party in interest has responded, including the Plaintiff. The defaults of all parties other than the Plaintiff are entered, but because the Plaintiff is *pro se*, this matter will nevertheless be called and proceed as scheduled. The court intends to GRANT this motion.

I.

The facts underlying this adversary proceeding are murky at best. Balian filed his Chapter 13 petition ("the Main Case") on June 14, 2024. *See In re Balian*, Case No. 24-11650, Doc. #1. He filed the instant adversary proceeding on July 31, 2024, on week after Lewandowski filed a *Motion for Relief From Stay* in the Main Case. Doc. #1; Main Case Doc. #23. On September 6, 2024, the court granted Lewandowski's motion and lifted the stay to permit him to pursue state court remedies for unlawful detainer against Balian. Main Case Doc. #55.

The relationship between Balian and Lewandowski appears to be one of tenant and landlord, with Balian residing at all times relevant to

this adversary at property located at 21369 McIntosh Street, Tehachapi, CA 93651-2504 (the "Property"). Doc. #1.

Neither the Complaint nor the Motion to Dismiss do an adequate job of outlining the relevant facts of the case. Thus, except where noted otherwise, the court will outline the history of this case as outlined by Lewandowski and unrebutted by Balian in the stay relief motion (Main Case Doc. #23):

Lewandoski declares that in July of 2021, Balian asked Lewandoski to loan him money for the purchase of a house. Lewandoski declined to do so but agreed to purchase the Property and allow Balian to reside at the Property rent free for six months, during which time Balian would obtain financing to purchase the Property from Movant for the sum of \$399,999.00. This agreement was not reduced to writing or otherwise memorialized.

Balian did not obtain financing, but Lewandoski nevertheless continued to allow him to live rent-free on the Property based on continued representations that Balian would eventually purchase the Property.

In the Complaint, Balian asserts that he was Lewandowski's employee in some capacity which involved him "supervising and provid[ing] support" to Lewandowski's son, Andre, who purportedly suffered from a number of criminal and/or substance abuse issues, none of which (even if true) are germane to this adversary.

In 2023, Lewandoski chose to sell the Property, and on August 1, 2023, Lewandoski's attorney served Balian with a 60-day Notice of Termination. Balian did not timely vacate the Property, and Lewandoski filed the Unlawful Detainer Action against him in the State Court. As part of the stay relief motion, Lewandoski declared that the State Court Action did not seek to recover any unpaid rent but simply to remove Balian from the Property.

On the eve of trial in the Unlawful Detainer action, Balian filed the Main Case.

On July 24, 2024, Lewandowski filed his first stay relief motion, which the court later dismissed without prejudice on procedural grounds. Main Case Docs. #23, #35. On July 31, 2024, Balian filed the instant adversary. Doc. #1. On August 12, 2024, Lewandowski filed his second stay relief motion which was free of procedural errors, and the court granted that motion on September 6, 2024. Main Case Doc. #55. The deadline for appealing the court's order lifting the automatic stay pursuant to Fed. Rule. Bankr. Pro. 8002(a) was September 20, 2024, which passed without any effort by Balian to appeal the order. *See Docket generally*; Rule 8002(a)(1).

As noted, Balian filed this adversary one week after Lewandowski filed his first stay relief motion. The Complaint raises two causes of action: (1) fraud and (2) injunctive relief. Doc. #1. The Complaint is brief and meandering and spends most of its four pages attacking the character of Lewandowski and his son, Andre. Doc. #1. The complaint alleges (in a confusing manner) that Balian performed

work for Lewandowski for which he was not paid, and that Lewandowski filed the state court Unlawful Detainer action to avoid paying what he owed to Balian. *Id.* Balian provides no further information as to the nature of his employment by Lewandowski in terms of how much he earned, how much he was paid, and how much he is owed. There is no indication of any written employment agreement nor the terms of an oral agreement. Balian asks for this specific relief:

1. That the court refrain from granting Lewandowski's *Motion for Relief from Stay* until the completion of this adversary;
2. That the court award Balian a minimum of \$500,000.00 in damages; and
3. That the court award Balian attorney's fees and costs.

On August 27, 2024, Lewandowski filed this motion to dismiss in lieu of answering the complaint. Doc. #11. Balian did not respond to the motion to dismiss.

II.

The court's standard for consideration of Rule 12(b)(6) motions is guided by Supreme Court's *Iqbal-Twombly* standard:

Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6), *incorporated by* Fed. R. Bankr. P. 7012(b). "A Rule 12(b)(6) dismissal may be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008); *accord Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

The Supreme Court has established the minimum requirements for pleading sufficient facts. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

In ruling on a Rule 12(b)(6) motion to dismiss, the court accepts all factual allegations as true and construes them, along with all reasonable inferences drawn from them, in the light most favorable to the non-moving party. *Spewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). The court need not, however, accept legal conclusions as true. *Iqbal*, 556

U.S. at 678. "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" Id. (quoting *Twombly*, 550 U.S. at 555).

In addition to looking at the facts alleged in the complaint, the court may also consider some limited materials without converting the motion to dismiss into a motion for summary judgment under Rule 56. Such materials include (1) documents attached to the complaint as exhibits, (2) documents incorporated by reference in the complaint, and (3) matters properly subject to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); accord *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (per curiam) (citing *Jacobson v. Schwarzenegger*, 357 F. Supp. 2d 1198, 1204 (C.D. Cal. 2004)). A document may be incorporated by reference, moreover, if the complaint makes extensive reference to the document or relies on the document as the basis of a claim. *Ritchie*, 342 F.3d at 908 (citation omitted).

Consol. Res., Inc. v. Dro Barite, LLC (In re Don Rose Oil, Inc.), 614 B.R. 358, 366-67 (Bankr. E.D. Cal. 2020).

The court acknowledges that Debtor filed this adversary proceeding pro se and is therefore held to less stringent standards. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197 (2007) ("A document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.") (internal quotations and citations omitted). However, "pro se litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of record." *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986). "Thus, before dismissing a pro se complaint, the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992), citing *Draper v. Coombs*, 795 F.2d 915, 924 (9th Cir. 1986).

Here, Balian was given notice of the *Motion to Dismiss* but has not filed any kind of response. While the court will still give Balian the opportunity to be heard on this matter, absent any persuasive opposition, the court will GRANT this motion.

III.

The complaint alleges (for some definitions of "allege," the court supposes) two causes of action against Lewandowski: (1) fraud and (2) injunctive relief. Doc. #1. The court will address each in turn under the 12(b)(6) standard outlined above.

A. FRAUD.

Balian first asserts a fraud claim against Lewandowski. Doc. #1. As the court has noted, the complaint is short on legal analysis or

even clearly-stated factual predicates for alleged causes of action and long on ad hominem attacks against Lewandowski and accusations of wrong-doing by Lewandowski's son, who is not a party to this adversary. Doc. #1. As best the court can divine, the gravamen of Balian's fraud claim is that Lewandowski did not pay Balian for services rendered and that the state court action for Unlawful Detainer was somehow filed fraudulently. *Id.*

Under California law:

[t]he elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.

Lazar v. Superior Court of Los Angeles, 12 Cal. 4th 631, 638, 49 Cal. Rptr. 2d 377, 909 P.2d 981 (1996) (quoting 5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 676, p. 778; see also Civ. Code, § 1709.

This is consistent with the definition of actual fraud found in the Bankruptcy Code in 11 U.S.C. § 523(a)(2)(A), which permits a creditor to have a particular debt be declared nondischargeable if the creditor can establish five elements: (1) The debtor made representations (2) that the debtor knew at the time were false, (3) that the debtor made with the intention and purpose to deceive the creditor, (4) and that the creditor justifiably relied upon and (5) sustained loss and/or damages as a proximate result of the misrepresentation. *In re Sabban*, 600 F.3d 1219, 1222 (9th Cir. 2010).

Applying this standard to the complaint, Balian does not identify any specific representations made by Lewandowski at all, let alone any that Lewandowski made to Balian despite knowledge of their falsity. Balian does not identify any statements made by Lewandowski with the intent to defraud Balian. The complaint does not allege that Balian relied upon any statements by Lewandowski and suffered damages as a result.

Indeed, the only time Balian even mentions fraud within the body of his complaint is a single conclusory statement asserting that Lewandowski's state court complaint for Unlawful Detainer was somehow "fraudulent." Doc. #1 (Count I). Balian provides no basis for concluding that the unlawful detainer action was somehow fraudulent, and his use of the term is clearly just a "label or conclusion" which, under *Iqbal*, this court need not accept. *Iqbal*, 556 U.S. at 678.

In any event, the court has already lifted the automatic stay to allow the state court Unlawful Detainer action to proceed, and the time for appealing that ruling has passed. If Balian has any legitimate grounds to argue that the state court action was filed fraudulently, he is free to present such arguments to the state court judge who will oversee that action. But on the basis of the

four corners of the complaint, Balian has failed to show either a cognizable legal theory in support of this claim or the presence of sufficient facts alleged under a cognizable legal theory. Accordingly, dismissal under 12(b)(6) is proper.

Given that Balian is *pro se*, the court will allow Balian 14 days from entry of this order to file an amended pleading that states a cognizable claim for relief.

B. Injunctive Relief.

Balian's claim for "injunctive relief" has even less validity than his fraud claim. It consists of a single paragraph full of nothing but boilerplate legal terms and ending with the following language: "whereby Plaintiff therefore seeks injunctive relief to enjoin and restrain all actions inconsistent with plaintiff's [sic] MOTION FOR RELIEF FROM STAY." Doc. #1, pg. 3. Aside from the lack of legal support or the presentation of any facts or cognizable legal theory, this language is facially incoherent, as the motion for stay relief was not filed by the *Plaintiff* in this adversary, but by the Defendant. Balian cites no authority for the idea that it is appropriate to file an adversary proceeding for the purpose of restraining the adversary defendant from pursuing a motion properly brought as a contested matter under Rule 9014 in the underlying bankruptcy case, and the court is aware of no such authority.

Balian had opportunity to oppose the stay relief motion and did so. See *Main Case Docs. ##51-52*. The court did not find Balian's opposition to have merit and granted the *Motion to Lift Stay*. Doc. #55. Accordingly, to the extent that this count ever had any validity, it is now moot because the stay relief motion has been granted and the time for appeal has run. This count therefore fails to state a claim upon which relief can be granted, and dismissal of this count is appropriate.

C. RULE 12(e) DISMISSAL.

As an alternative grounds for dismissal, Lewandowski argues that "a party may move to dismiss a complaint 'for a more definite statement.'" Doc. #13, pg. 3. Lewandowski goes on to say:

Here, the operative complaint is undeniably confused and unclear. The complaint identifies two causes of action, but the allegations of the complaint are entirely incoherent. The complaint does not adequately apprise Defendant of the allegations against him, and Defendant cannot reasonably be expected to respond to the complaint in its current form.

For the foregoing reasons, Defendant requests dismissal of the complaint pursuant Fed. R. Civ. P. Rule 12(e).

Id. Lewandowski misunderstands Rule 12(e), which states:

A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but

which is so vague and ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

Fed. R. Civ. Pro. 12(e) (adopted as part of the Bankruptcy Rules by Fed. R. Bankr. Pro. 7012(b)). Thus, from a procedural standpoint, Rule 12(e) by its own terms does not authorize the court to outright dismiss a complaint for vagueness or ambiguity. Rather, Rule 12(e) allows the defendant to move for a more definite statement, and if the court grants that motion, it sets a deadline to amend the complaint and cure the ambiguity.

While the court agrees with Defendant that the Complaint is unclear if not incoherent, in the court's view, directing Plaintiff to file a more definite statement as a prerequisite to dismissal is unnecessary in light of the court's prior dismissal of the Complaint with leave to amend on Rule 12(b)(6) grounds. That argument is moot.

D. LEAVE TO AMEND UNDER RULE 15(a).

Federal Rule of Civil Procedure 15(a) provides that leave to amend "shall be freely given when justice so requires." Circuit law is well settled on this point. "In determining whether to grant leave to amend the court should consider five factors: bad faith, undue delay, prejudice, futility, and previous amendments. *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004). "Futility alone can justify" denying leave to amend. *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2004)." *Aluisi v. Jorgensen (In re Jorgensen)*, No. 18-14586-A-13, 2019 Bankr. LEXIS 3771, 2019 WL 6720418, at *9 (Bankr. E.D. Cal. Dec. 10, 2019).

Husted v. Taggart (In re ECS Ref., Inc.), 625 B.R. 425, 461 (Bankr. E.D. Cal. 2020).

Without wading into the thicket of whether Balian has demonstrated bad faith, undue delay, and prejudice to Lewandowski by filing a Chapter 13 petition on the eve his Unlawful Detainer trial and then filing this adversary in response to Lewandowski's stay relief motion, the court is inclined to think that amending the adversary complaint at this point would be an exercise in futility. Setting aside the request for damages in the amount of \$500,000.00, plus attorney's fees and costs, which are all wholly unsupported by the complaint, the primary purpose of this adversary is clearly to prevent the court from lifting the stay to allow the Unlawful Detainer action to proceed. That ship has sailed. The court has granted the motion for stay relief, and the time to appeal that ruling has run.

Nevertheless, the court is mindful of Balian's pro se status and cautious about completely closing the door to a pro se litigant's quest for relief without giving him an opportunity correct the defects in his complaint. Leave to amend will be granted.

V.

CONCLUSION

Based on the foregoing analysis, the court holds that the Defendant's *Motion to Dismiss* under Rule 12(b)(6) is GRANTED, the motion for a more definite statement included in the main motion is DENIED AS MOOT. Balian has fourteen (14) days to amend his first claim for relief.

2. [24-11650](#)-B-13 **IN RE: BEDROS BALIAN**
[24-1021](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-31-2024 [\[1\]](#)

BALIAN V. LEWANDOWSKI
BEDROS BALIAN/ATTY. FOR PL.

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

DISPOSITION: Continued to November 6, 2024, at 11:00 a.m.

ORDER: The court will prepare the order.

The court has granted the Defendant's Rule 12(b)(6) motion to dismiss in this adversary and granted Plaintiff fourteen (14) days to amend. *See Item #2, above.* Accordingly, this Status Conference will be continued to **November 6, 2024, at 11:00 a.m.**

3. [23-12573](#)-B-7 **IN RE: JULIE BLACK**
[24-1019](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-11-2024 [\[1\]](#)

BLACK V. DEPARTMENT OF
EDUCATION/AIDVANTAGE
NEIL SCHWARTZ/ATTY. FOR PL.

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

DISPOSITION: Continued to November 6, 2024, at 11:00 a.m.

ORDER: The court will prepare the order.

This matter will be continued due to deficiencies in service of process.

First, service on the Department of Education must comply with Fed. R. Bankr. Pro. 7004(b)(4) and (5), which require that the U.S. Attorney for the district in which the action is brought must be served a copy of the complaint when an adversary is brought against an officer or agency of the United States.

Second, the Certificate of Service reflects that Debtor served "Dept. Of Ed/Aidvantage." However, it appears based on the court's internet search that Aidvantage is a loan servicer acting as d/b/a Maximus Education LLC. Thus, by serving "Dept. Of Ed/Aidvantage," Debtor failed to properly serve Aidvantage.

Debtor shall have a new summons issued and properly serve those entities. This matter shall be CONTINUED to November 6, 2024, at 11:00 a.m., and it shall be subject to further continuance based on the new status conference date set on the new summons.

4. [23-11175](#)-B-7 **IN RE: JASWINDER SINGH**
[23-1047](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
5-3-2024 [\[24\]](#)

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

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

DISPOSITION: Continued to November 13, 2024, at 11:00 a.m.

ORDER: The court will prepare the order.

On September 26, 2024, the court entered an order for the appointment of an alternative dispute resolution advocate. Doc. #44. Accordingly, this matter is CONTINUED to **November 13, 2024, at 11:00 a.m. (Fresno Calendar)**. The Trustee shall file a status report on or before November 6, 2024.

5. [23-11175](#)-B-7 **IN RE: JASWINDER SINGH**
[DMG-1](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-5-2023 [\[38\]](#)

JEFFREY VETTER/MV
VINCENT GORSKI/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

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

DISPOSITION: Continued to November 13, 2024, at 11:00 a.m.

ORDER: The court will prepare the order.

On September 26, 2024, the court entered an order for the appointment of an alternative dispute resolution advocate. Doc. #44. Accordingly, this matter is CONTINUED to **November 13, 2024, at 11:00 a.m. (Fresno Calendar)**. The Trustee shall file a status report on or before November 6, 2024.

11:30 AM

1. [24-11591](#)-B-7 **IN RE: CONNIE CHASE**

REAFFIRMATION AGREEMENT WITH ALLY BANK
8-22-2024 [\[14\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between Connie Faye Chase ("Debtor") and Ally Bank for a 2019 Honda Accord ("Vehicle") was filed on August 22, 2024. Doc. #14.

11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

The court finds no evidence that this Reaffirmation Agreement is in the best interest of the Debtor. Accordingly, approval of the Reaffirmation Agreement between Debtor and Ally Bank will be DENIED.

2. [24-11597](#)-B-7 **IN RE: LEOBARDO ENCISO AND ADRIANA FIGUEROA**

PRO SE REAFFIRMATION AGREEMENT WITH FIRST CREDIT FINANCE
8-25-2024 [\[16\]](#)

OSCAR SWINTON/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between Leobardo Figueroa Enciso and Andriana Figueroa ("Debtors") and First Credit Finance for a 2008 Chevrolet Silverado was filed on August 25, 2024. Doc. #16.

Debtors were represented by counsel when they 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. Ok. 2009) (emphasis in original). In this case, Debtors’ attorney affirmatively represented that the agreement established a presumption of undue hardship. The reaffirmation agreement, in the absence of a declaration by debtor’s counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable. Therefore, the reaffirmation agreement will be DENIED.