



UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, October 3, 2024  
Department A – 510 19<sup>th</sup> street  
Bakersfield, California

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

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

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

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

Please also note the following:

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

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

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

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

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

## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [24-11202](#)-A-13     **IN RE: JACOB/KATHLEEN EYRAUD**  
[LGT-2](#)

MOTION TO DISMISS CASE  
9-5-2024    [\[24\]](#)

STEVEN ALPERT/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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 filed and served on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On September 19, 2024, the debtors filed a statement of non-opposition to dismissal of the bankruptcy case. Doc. #28. The failure of 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 default of the non-responding parties is 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 moves the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors for failure to confirm a chapter 13 plan. Doc. #24. The debtors do not oppose dismissal of this bankruptcy case. Doc. #28.

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 because the debtors have failed to confirm a chapter 13 plan.

A review of the debtors' Schedules A/B, C and D appears to show approximately \$26,000.00 in equity in a 2020 GMC Yukon vehicle that could be liquidated by a chapter 7 trustee for the benefit of creditors. However, a review of the filed proofs of claim shows an asserted security interest in the 2020 GMC Yukon that is not listed in the debtors' schedules. Schedule D, Doc. #1; Claim 2. Based on the proof of claim, there is no equity in the 2020 GMC Yukon after considering

the secured claim and the claimed exemption. Because there does not appear to be any equity in the debtors' assets after considering secured claims and claimed exemptions, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

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

2. [24-11810](#)-A-13     **IN RE: KELLY HARMEL-BLEDSON**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG  
8-13-2024    [\[23\]](#)

DAVID CHUNG/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 September 6, 2024. Doc. #34.

3. [24-11526](#)-A-13     **IN RE: CRYSTAL JACKSON**  
[LGT-1](#)

MOTION TO DISMISS CASE  
8-22-2024    [\[34\]](#)

LILIAN TSANG/MV

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 filed and served on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor and 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 are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #34. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) set a plan for hearing with notice to creditors; (2) provide Trustee with requested documents; (3) file a complete plan (the plan filed was blank); and (4) file accurate schedules and/or statements. In addition, the debtor is ineligible to be a debtor in a chapter 13. The debtor failed to complete the credit counseling certificate prior to the bankruptcy filing date. 11 U.S.C. § 109(h). Doc. #34. The debtor did not oppose the motion.

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

In addition, under 11 U.S.C. § 109(h), an individual may not be a debtor unless the debtor received credit counseling within the 180-day period ending on the petition date. 11 U.S.C. § 109(h)(1). Crystal Yvette Jackson ("Debtor") filed for relief under chapter 13 of the Bankruptcy Code on June 3, 2024. Doc. #1. The Certificate of Counseling filed on July 2, 2024 shows that Debtor received credit counseling on July 1, 2024, which was after Debtor filed this bankruptcy case. Doc. #19.

The Bankruptcy Code allows the debtor to request a waiver of the § 109(h)(1) requirement to receive credit counseling pre-petition based on exigent circumstances. 11 U.S.C. § 109(h)(3)(A). However, Debtor has not requested a waiver of the § 109(h)(1) requirements. Because Debtor did not receive credit counseling within the 180-days prior to filing the bankruptcy petition and has not received a waiver of that requirement, Debtor may not be a debtor pursuant to § 109(h).

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

4. [24-11549](#)-A-13     **IN RE: GILBERT BERLANGA**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG  
7-22-2024     [\[13\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

MOTION TO VALUE COLLATERAL OF MAIN FINANCIAL  
9-19-2024    [\[24\]](#)

GILBERT BERLANGA/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

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

Gilbert Berlanga ("Debtor"), the debtor in this chapter 13 case, moves the court for an order valuing Debtor's 2008 Mazda 6 ("Vehicle"), which is the collateral of One Main Financial ("Creditor"), at \$1,500.00. Doc. #24.

11 U.S.C. § 1325(a)(\*) (the hanging paragraph) permits the debtor to value a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan is not a purchase money security interest secured by the property. Here, the current loan is based on a refinance made in April 2023, so Creditor does not hold a purchase money security interest in the Vehicle. Thus, the hanging paragraph of 11 U.S.C. § 1325 does not preclude Debtor from bifurcating Creditor's claim.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtor asserts the loan on the Vehicle was refinanced through Creditor in April 2023. Decl. of Debtor, Doc. #26. At the time Debtor filed this bankruptcy case, the Vehicle had 125,000 miles on it and had been in an accident. Id. Debtor asserts the Vehicle is worth \$1,500.00 and asks the court for an order valuing the Vehicle at \$1,500.00. Id. Debtor is competent to testify as to the value of the Vehicle. Creditor filed a proof of claim on July 12, 2024, which asserted a value for the Vehicle of \$7,75.00. Claim 3. It is not clear whether Creditor's assertion of value takes into account that the Vehicle, as testified to by Debtor, was in an accident pre-petition.

Pending opposition being raised at the hearing, the motion will be GRANTED. Creditor's secured claim will be fixed at \$1,500.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

6. [24-11564](#)-A-13     **IN RE: JALAIN BEEMS**  
[APD-1](#)

MOTION TO CONFIRM PLAN  
8-29-2024    [[26](#)]

JALAIN BEEMS/MV  
ANTHONY DIEHL/ATTY. FOR DBT.

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

There is no certificate of service filed with the court showing when the motion was served. Therefore, the motion filed by the debtor does not comply with Local Rule of Practice 9014-1(e)(3), which requires that proof of service of all pleadings be filed with the court not more than three (3) days after the pleading is filed with the court.

7. [18-12667](#)-A-13     **IN RE: SAMANTHA JOHNSON**  
[LGT-2](#)

CONTINUED MOTION TO DISMISS CASE  
7-10-2024    [[106](#)]

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

NO RULING.

8. [24-10893](#)-A-13     **IN RE: CECELIA MCNABB**  
[RSW-2](#)

CONTINUED MOTION TO CONFIRM PLAN  
7-25-2024    [[26](#)]

CECELIA MCNABB/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

1. [24-12301](#)-A-7     **IN RE: JOSE CASTILLO-ROCHA AND IMELDA FERNANDEZ-ROCHA**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-26-2024    [\[13\]](#)

TD BANK, N.A./MV  
R. BELL/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.  
TD BANK, N.A. VS.

**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 filed and served on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 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) and (d)(2) with respect to a 2016 Dodge Challenger, VIN: 2C3CDZBT6GH210075 ("Vehicle"). Doc. #13.

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

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtors do 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 debtors have failed to make at least two complete pre-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$1,326.77, including late fees of \$32.35. Decl. of Petrice Williams, Doc. #16. Another payment in the amount of \$647.33 came due on August 30, 2024. Id. According to the debtors' Statement of Intention, the Vehicle will be surrendered. Doc. #1.



The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. The Vehicle is valued at \$21,825.00 and the debtors owe \$28,091.15. Decl. of John Eng, Doc. #15; Williams Decl., Doc. #16; Ex. D, Doc. #17.

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

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

2. [21-11103](#)-A-7     **IN RE: ANDERSON LAND SERVICES, INC.**  
[JMV-1](#)

MOTION TO PAY  
9-4-2024    [\[34\]](#)

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

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

DISPOSITION:     Granted.

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

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

As a procedural matter, the notice of hearing filed in connection with this motion (Doc. #35) does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The notice states that opposition must be filed and served on the parties identified an attachment to the notice but there is no attachment on the notice of hearing filed with the court. The court encourages the moving party 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.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Anderson Land Services, Inc., moves the court for an order authorizing the payment of: (1) \$440.15 to the Franchise Tax Board for estimated income tax due for the 2021 tax year; (2) \$1,190.82 to the Franchise Tax Board for estimated income tax due for the 2022 tax year; (3) \$883.17 to the Franchise Tax Board for estimated income tax due for the 2023 tax year; and (4) \$856.78 to the Franchise Tax Board for estimated income tax due for the 2024 tax year.

Doc. #34. The estate also requests an order authorizing the estate to pay up to an additional \$1,000.00 for any unexpected tax liabilities to the Franchise Tax Board without further court approval. Id.

11 U.S.C. § 503(b)(1)(B) states that, after notice and a hearing, administrative expenses shall be allowed for "any tax [] incurred by the estate, whether secured or unsecured, including property taxes . . . except a tax of a kind specified in section 507(a)(8) of this title[.]" "Pursuant to this subsection of § 503, a claim is entitled to allowance as an administrative expense if two requirements are satisfied: the tax must be incurred by the estate and the tax must not be a tax of a kind specified in § 507[(a)(8)]." Towers for Pacific-Atlantic Trading Co. v. United States (In re Pacific-Atlantic Trading Co.), 64 F.3d 1292, 1298 (9th Cir. 1995). Here, Trustee has shown that the tax was incurred by the estate, and the tax is not a tax of the kind specified in § 507(a)(8). Decl. of Jeffrey M. Vetter, Doc. #36.

Accordingly, this motion is GRANTED. The estate is authorized to pay (1) \$440.15 to the Franchise Tax Board for estimated income tax due for the 2021 tax year; (2) \$1,190.82 to the Franchise Tax Board for estimated income tax due for the 2022 tax year; (3) \$883.17 to the Franchise Tax Board for estimated income tax due for the 2023 tax year; and (4) \$856.78 to the Franchise Tax Board for estimated income tax due for the 2024 tax year as administrative tax expenses. The estate is also authorized to pay up to an additional \$1,000.00 for any unexpected tax liabilities to the Franchise Tax Board without further court approval.

3. [24-11626-A-7](#) **IN RE: MANDIP GREWAL**  
[UST-1](#)

MOTION TO EXTEND TIME TO FILE A MOTION TO DISMISS CASE UNDER SEC. 707(B)  
AND/OR MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE  
OF THE DEBTOR  
9-10-2024 [[36](#)]

TRACY DAVIS/MV  
MICHAEL FLETCHER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"), moves the court for an order extending the time for filing a complaint objecting to the discharge of Mandip Kaur Grewal ("Debtor"), the chapter 7 debtor in this bankruptcy case, under 11 U.S.C. § 727 and/or a motion to dismiss under § 707(b). Doc. #36.

Federal Rule of Bankruptcy Procedure ("Rule") 4004(b)(1) provides that, "[o]n motion of any party in interest, after notice and a hearing, the court may for cause extend the time to object to discharge." Similarly, Rule 1017(e)(1) allows the court, "for cause" to extend the time for filing a motion to dismiss under 11 U.S.C. § 707(b). In both cases, the deadline for filing such a motion is 60 days after the initial meeting of creditors. Rules 1017(e)(1); 4004(b)(1). UST's motion was filed on September 10, 2024, the sixtieth day after the first date set for the meeting of creditors and is timely.

After review of the included evidence, the court finds that "cause" exists to extend the filing deadlines. UST requested basic documents such as tax returns and bank statements from Debtor, which were partially provided on July 18, 2024. Decl. of Cecilia Jimenez, Doc. #38. On September 3 and 4, 2024, UST received additional documents requested from Debtor right before the deadline for UST to file an objection under 11 U.S.C. § 707(b) or a complaint under 11 U.S.C. § 727. Id. The documents provided to UST in early September 2024 indicate that Debtor did not list income earned by her non-filing spouse, Randeep Grewal, and that the non-filing spouse owns real property that may or may not need to be included on Debtor's bankruptcy schedules. Id. Because UST received the documents just before the deadline to file an objection under 11 U.S.C. § 707(b) or a complaint under 11 U.S.C. § 727, UST is still reviewing the documents and completing an analysis of the assets and debts listed in Debtor's petition. Id. UST requests a 50-day extension to allow time for her to complete her analysis of the bankruptcy case. Id.

Accordingly, pending opposition being raised at the hearing, this motion will be GRANTED. The time for UST to file a complaint objecting to Debtor's discharge and the time for UST to file a motion to dismiss or convert Debtor's case for abuse under § 707(b) will both be extended to October 30, 2024.

4. [24-12197](#)-A-7     **IN RE: ANTONIO GARCIA MORA AND YUBEL GARCIA**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-15-2024     [\[11\]](#)

KINECTA FEDERAL CREDIT UNION/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 filed and served on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The

failure of creditors, the 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 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, Kinecta Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2021 Audi Q7, VIN: WA1AJAF76MD040555 ("Vehicle"). Doc. #11.

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 debtors do 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 debtors have failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$2,053.92, including late fees of \$83.20. Decl. of Silvia Mendez, Doc. #15. Movant recovered the Vehicle pre-petition, and the Vehicle is being stored pending relief from the automatic stay. Id. Debtors do not list the Vehicle on their bankruptcy schedules. Doc. #1.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. The Vehicle is valued at \$32,000.00 and the debtors owe \$52,512.08. Mendez Decl., Doc. #15.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least three pre- and post-petition payments to Movant, Movant recovered the Vehicle pre-petition, the debtors did not list the Vehicle on their bankruptcy schedules, and the Vehicle is a depreciating asset.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-17-2024    [\[56\]](#)

DALE E. FOWLER AS TRUSTEE OF THE D AND S FOWLER REVOCABLE TRUST  
LARRY ROTHMAN/ATTY. FOR MV.  
DISMISSED 10/1/24

TENTATIVE RULING:            This matter will proceed as scheduled.

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

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

On September 18, 2024, this court granted the ex parte application of Dale E. Fowler, as Trustee of the D and S Fowler Revocable Trust ("Movant"), for an order shortening time to hear Movant's motion for relief the automatic stay. Doc. #57. By the motion, Movant seeks relief from the automatic stay under 11 U.S.C. § 362(d)(4) to proceed with an unlawful detainer action against Duncan Chavez and Selena Menzie (together, "Debtors"), the chapter 7 debtors in this bankruptcy case, with respect to real property located at 1340 N. Dynamics Street, Suite C, Anaheim, CA 92806 (the "Property"). Doc. #56. By the cover sheet filed with the motion, Movant seeks relief from stay under 11 U.S.C. § 362(d)(1), 11 U.S.C. § 362(d)(2) and 11 U.S.C. § 362(d)(4). Doc. #60.

This motion was originally set for hearing on September 25, 2024 at 1:30 p.m. pursuant to Local Rule of Practice 9014-1(f)(3). At the initial hearing on the motion, the court continued the hearing on the motion to permit Movant to supplement legal authority for granting the relief requested. Order, Doc. #70. On September 27, 2024, Movant filed supplemental legal authority in support of the motion. Doc. #76-77.

This bankruptcy case was dismissed on October 1, 2024 for the failure of Debtors to appear at the 341 meeting of creditors. Order, Doc. #78. Therefore, prospective relief pursuant to 11 U.S.C. § 362(d)(1) is moot pursuant to 11 U.S.C. § 362(c)(2)(B). In the dismissal order, however, the court retained jurisdiction to rule on and enter an order with respect to Movant's motion, including relief pursuant to 11 U.S.C. § 362(d)(4) and *in rem* relief pursuant to 11 U.S.C. § 362(d)(1). Order, Doc. #78.

For the reasons set forth below, the non-moot relief requested by Movant is denied.

#### **Relevant Facts**

Movant owns the Property. Decl. of Jeffrey Fowler, Doc. #62. The Property is a commercial property. Id. Effective as of January 13, 2023, Movant entered into a one-year industrial building lease ("Lease") with Hezzy Powder Coating, Inc. ("Defendant") commencing on February 1, 2023 and ending on January 31, 2024. Ex. 1 to Ex. 1, Doc. #61. Defendant conducted business on the Property. Id. At the end of the Lease term, Movant and Defendant agreed that Defendant could continue to rent the Property on a month-to-month basis. Id.

In February 2024, Movant elected to terminate the month-to-month tenancy with Defendant. Ex. 1, Doc. #61. On February 15, 2024, Movant sent a thirty-day

notice to quit to Defendant stating that the terms of the Lease had expired and that Movant had elected to terminate the tenancy effective March 31, 2024. Ex. 2 to Ex. 1, Doc. #61. Defendant failed to quit the Property and, on April 8, 2024, Movant filed an unlawful detainer action against Defendant in the Superior Court of California, County of Orange, Case No. 30-2024-01392879-CL-UD-CLC ("Action"). Ex. 1, Doc. #61.

On April 29, 2024, debtor Selena Menzie filed a prejudgment claim of right to possession in the Action asserting that: (a) Ms. Menzie resides at the Property; (b) Ms. Menzie was not named as a defendant in the unlawful detainer; and (c) the rental agreement Ms. Menzie has with respect to the Property is an oral or written rental agreement with a person other than the landlord. Ex. 1 at Ex. 3, Doc. #61. Movant has never heard of Ms. Menzie and has not authorized Ms. Menzie to reside at a commercial property. Fowler Decl., Doc. #62.

On July 10, 2024, Debtors filed a voluntary chapter 7 bankruptcy petition. Doc. #1. This bankruptcy case was dismissed on October 1, 2024 for the failure of Debtors to appear at the 341 meeting of creditors. Order, Doc. #78.

## **11 U.S.C. § 362(d) (4) Analysis**

To prevail on a motion for relief from the bankruptcy stay under 11 U.S.C. § 362(d) (4) (A), the moving party must prove (1) the moving party holds a security interest in the real property at issue, and (2) the filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved either (a) a transfer of all or part ownership of, or other interest in such real property without the consent of the secured creditor or court approval; or (b) multiple bankruptcy filings affecting such real property. In re Duncan & Forbes Dev., Inc., 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007) (interpreting a prior version of 11 U.S.C. § 362(d) (4)). By its language, relief from stay under § 362(d) (4) is available only to a creditor whose claim is secured by an interest in real property. If Movant is not a secured creditor, there is no statutory authority for an *in rem* order for property owners anywhere in the Bankruptcy Code and 11 U.S.C. § 105(a) cannot create one. Marr Sanchez & Assoc. v. Hernandez (In re Hernandez), Case No. 16-42059, 2016 Bankr. LEXIS 3044 (Bankr. N.D. Cal. Aug. 15, 2016).

Movant claims a security interest exists in the Property pursuant to paragraph 13 of the Lease quoting the following language: "the landlord has the right to attach, take possession of or other judicial seizure of substantially all of lease's [sic] assets at the premises." Supp. Brief at 4:23-24, Doc. #76. However, in a thorough review of paragraph 13 of the Lease, the court could not find the quoted language. As an initial matter, the term "landlord" is not used in the Lease. Rather, Movant is referred to "Lessor" and Defendant is referred to as "Lessee." Thus, it appears that the language quoted in the supplemental brief is not from the Lease. To the extent that the Lease has language regarding attachment, the only relevant language the court could find is in paragraph 13.1(d) of the Lease, which provides that one occurrence that shall constitute a material default and breach of the Lease is "the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or the Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days[.]" Ex. 1 to Ex. 1, Doc. #61. This language does not grant a security interest to Lessor in Lessee's property.

Because Congress limits relief from stay under § 362(d) (4) to creditors holding a security interest in the property to be subject to an order pursuant to 11 U.S.C. § 362(d) (4), and there is insufficient evidence to show Movant is a secured creditor, the court finds that relief from stay cannot be granted to Movant pursuant to § 362(d) (4).

Even if the court determined that Movant was a creditor that could request relief from stay pursuant to 11 U.S.C. § 362(d)(4), Movant has not made the necessary showing for this court to grant such relief. Section 362(d)(4) of the Bankruptcy Code allows the court to grant relief from the stay with respect to real property

if the court finds that the filing of the [bankruptcy] petition was part of a scheme to delay, hinder, or defraud creditors that involved either [] a transfer of all or part ownership of, or other interest in such real property without the consent of the secured creditor or court approval; or [] multiple bankruptcy filings affecting such real property.

11 U.S.C. § 362(d)(4). To obtain relief under § 362(d)(4), the court must affirmatively find: (1) the debtor's bankruptcy filing is part of a scheme; (2) the object of the scheme is to delay, hinder, or defraud creditors; and (3) the scheme involves either (i) the transfer of some interest in real property without the secured creditor's consent or court approval or (ii) multiple bankruptcy filings affecting the property. First Yorkshire Holdings, Inc. v. Pacifica L 22 (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2011). "[T]he multiple filings thus must somehow be connected with or included in the scheme to delay, hinder and defraud creditors." In re Muhaimin, 343 B.R. 159, 168 (Bankr. D. Md. 2006).

"A scheme is an intentional construct. It does not happen by misadventure or negligence." Duncan & Forbes Dev., 368 B.R. at 32. Because direct evidence of a scheme is uncommon, "the court must infer the existence and contents of a scheme from circumstantial evidence. The party claiming such a scheme must present evidence sufficient for the trier of fact to infer the existence and content of the scheme." Id.; see Jimenez v. ARCPE 1, LLP (In re Jimenez), 613 B.R. 537, 545 (B.A.P. 9th Cir. 2020).

Here, the court finds that a showing under § 362(d)(4) has not been made. Movant has provided no evidence that (1) this bankruptcy case is part of a scheme, or (2) the object of the scheme was to hinder, delay, or defraud creditor. See First Yorkshire Holdings, 470 B.R. at 870. While the Debtors filed a "barebones" bankruptcy petition, this is Debtors' only bankruptcy filing. Further, Movant suggests that Debtors' bankruptcy was filed as part of a scheme to defraud creditors, as evidence by Debtors failure to show any proof Ms. Menzie was a tenant of the Property. Doc. #56. Movant asserts that Debtors failing to appear at any hearings is enough to show that Debtors intended to delay, hinder or defraud Movant. However, Debtors failing to appear at any hearing or Debtors having no alleged interest in the Property does not, by itself, show a scheme for purposes of 11 U.S.C. § 362(d)(4).

## **11 U.S.C. § 362(d)(1) Analysis**

This bankruptcy case was dismissed on October 1, 2024. Order, Doc. #78. Therefore, prospective relief pursuant to 11 U.S.C. § 362(d)(1) is moot pursuant to 11 U.S.C. § 362(c)(2)(B).

Citing In re Vazquez, 580 B.R. 526, 535 (Bankr. C.D. Cal. 2017), Movant asserts this court retains the power to grant *in rem* relief to Movant under 11 U.S.C. § 362(d)(1) pursuant to 11 U.S.C. § 105(a). Doc. #76. The court respectfully disagrees with the analysis in Vazquez. Section 105(a) allows the court to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. 11 U.S.C. § 105(a). However, the United States Supreme Court has stated "[i]t is hornbook law that § 105(a) 'does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code.'" Law v. Siegel, 571 U.S. 415, 421 (2014). Here, Congress

has provided by statute the requirements for granting *in rem* relief in 11 U.S.C. § 362(d)(4). Granting *in rem* relief pursuant to the court's powers under 11 U.S.C. §§ 362(d)(1) and 105(a) "would necessarily require this [c]ourt to expand the explicit limitation of § 362(d)(4) to a party that is clearly not a 'creditor holding a secured interest[,]' " and that is something that this court will not do. Marr Sanchez, 2016 Bankr. LEXIS 3044 at \*5 (citation omitted).

For the above reasons, the court will not grant any *in rem* relief from stay pursuant to 11 U.S.C. § 362(d)(1).

#### **Waiver of 14-Day Stay**

Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3) provides for a 14-day stay of an order granting a motion made in accordance with Rule 4001(a)(1) unless the court orders otherwise. Fed. R. Bankr. P. 4001(a)(3). Because prospective relief pursuant to 11 U.S.C. § 362(d)(1) is moot pursuant to 11 U.S.C. § 362(c)(2)(B), Movant's request for waiver of the 14-day stay in accordance with Rule 4001(a)(1) is denied as moot.

#### **Conclusion**

Accordingly, the motion will be DENIED AS MOOT with respect to prospective relief from the automatic stay pursuant to 11 U.S.C. § 362(c)(2)(B). Further, the motion will be DENIED pursuant to 11 U.S.C. § 362(d)(4) and for any *in rem* relief from stay pursuant to 11 U.S.C. § 362(d)(1). Finally, Movant's request for waiver of the 14-day stay in accordance with Rule 4001(a)(1) is DENIED AS MOOT.



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

ORDER TO SHOW CAUSE  
8-29-2024    [[290](#)]

IGNACIO LAZO/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

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

ORDER:                        The court will issue an order.

On August 29, 2024, this court issued an order to show cause ("OSC") why counsel for the debtor Juarez Brothers Investments, LLC ("DIP") had not submitted a proposed order signed off by Jorge Gaitan as required by civil minutes issued on April 4, 2024 pursuant to a hearing on DIP's motion to amend a prior retainer order and dismiss DIP's chapter 11 bankruptcy case held on April 4, 2024. Doc. #290. The OSC required any written response to the OSC to be filed and served on or before September 26, 2024. Id. No written statement in response to the OSC has been filed.

Because no written statement was filed in response to the OSC, the court is inclined to enter its own order resolving DIP's motion heard on April 4, 2024. Specifically, the court will enter an order that: (1) amends this court's order entered on July 11, 2022 authorizing DIP to accept a third-party post-petition retainer and permit a third party to pay attorney's fees of DIP's bankruptcy counsel ("Order") by striking paragraph 4 of the Order to allow a third party to pay outstanding attorney's fees incurred on behalf of DIP's bankruptcy counsel without this court's review and approval; and (2) dismisses DIP's bankruptcy case.

2. [24-12295](#)-A-11     **IN RE: BURT ELECTRIC & COMMUNICATIONS, INC.**  
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION  
8-9-2024    [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

11:00 AM

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

PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT  
7-12-2024    [[99](#)]

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

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

DISPOSITION:        Dropped from calendar

ORDER:                The court will issue an order.

A stipulated judgment and consent decree in favor of the plaintiff was entered on October 2, 2024. Doc. #108. Accordingly, this pre-trial conference is dropped from calendar. This adversary may be administratively closed when appropriate.

11:30 AM

1. [24-11905](#)-A-7     **IN RE: JAVIER LARA CABRERA AND ALMA LARA**

PRO SE REAFFIRMATION AGREEMENT WITH U.S. BANK NATIONAL ASSOCIATION  
9-11-2024     [[14](#)]

OSCAR SWINTON/ATTY. FOR DBT.

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

DISPOSITION:     Denied.

ORDER:     The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship, which has not been rebutted in the reaffirmation agreement. In this case, the debtors' attorney refused to sign the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.