



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, October 5, 2023  
Department A – 510 19<sup>th</sup> Street  
Bakersfield, California**

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

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

To appear via zoom gov video or zoom gov telephone for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

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

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

**Video web address:**

<https://www.zoomgov.com/j/1609794167?pwd=VnVFfa085dmZNWUIvcHlhek1xTlNsdz09>

**Meeting ID:** 160 979 4167

**Password:** 987282

**Zoom.Gov Telephone:** (669) 254-5252 (Toll Free)

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

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

## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [23-11523](#)-A-13      **IN RE: JOSE TIRADO PEREZ**

MOTION TO VACATE DISMISSAL OF CASE  
9-15-2023    [\[59\]](#)

JOSE TIRADO PEREZ/MV  
JOSE TIRADO PEREZ/ATTY. FOR MV.  
DEBTOR DISMISSED 09/07/2023

NO RULING.

2. [23-11523](#)-A-13      **IN RE: JOSE TIRADO PEREZ**  
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
9-1-2023    [\[47\]](#)

MICHAEL MEYER/MV  
DISMISSED 09/07/2023

NO RULING.

3. [23-11229](#)-A-13      **IN RE: DUNCAN NORWOOD**  
[DWE-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NEWREZ LLC  
9-11-2023    [\[45\]](#)

NEWREZ LLC/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
DANE EXNOWSKI/ATTY. FOR MV.

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

DISPOSITION:      Denied as moot.

ORDER:              The court will issue an order.

The secured creditor objects to confirmation of the debtor's proposed plan on the ground that the plan lists the secured creditor's claim in the amount of \$29,000.00 to be paid at an 8.25% interest rate. Obj., Doc. #45. However, the plan to which the secured creditor's objection relates is the first plan filed by the debtor. Doc. #21. On August 31, 2023, the debtor filed a modified plan and set the modified plan for hearing on this calendar (RSW-2, Doc. #38), matter #5 below, which lists the secured creditor's claim in the amount of \$34,285.00 to be paid at an 8.25% interest rate.

Because this objection relates to a chapter 13 plan that has been superseded by a subsequent plan, this objection is DENIED AS MOOT.

4. [23-11229](#)-A-13     **IN RE: DUNCAN NORWOOD**  
[MHM-2](#)

MOTION TO DISMISS CASE  
8-28-2023    [\[32\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING  
WITHDRAWN

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

DISPOSITION:     Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on September 29, 2023. Doc. #53.

5. [23-11229](#)-A-13     **IN RE: DUNCAN NORWOOD**  
[RSW-2](#)

MOTION TO CONFIRM PLAN  
8-31-2023    [\[36\]](#)

DUNCAN NORWOOD/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

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

ORDER:             The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #49. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than October 19, 2023. 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 debtor's position. Trustee shall file and serve a reply, if any, by October 26, 2023.

If the debtor elects to withdraw this 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 October 26, 2023. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

6. [23-11653](#)-A-13      **IN RE: ROBERT ALVAREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
8-28-2023    [\[22\]](#)

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. An amended creditor matrix (Doc. #11) was filed by the debtor on August 14, 2023, which added five creditors who were not listed on the previously filed creditor matrix. A fee of \$32.00 was required at the time of filing because the amended creditor matrix added creditors. The fee was not paid. A notice of payment due was served on the debtor on August 26, 2023. Doc. #19.

If the filing fee of \$32.00 is not paid prior to the hearing, the amended creditor matrix (Doc. #11) may be stricken, and sanctions may be imposed on the debtor on the grounds stated in the order to show cause.

7. [23-10168](#)-A-13      **IN RE: ROBERT IRVIN**

MOTION TO CONFIRM PLAN  
9-14-2023    [\[111\]](#)

ROBERT IRVIN/MV  
ROBERT IRVIN/ATTY. FOR MV.  
RESPONSIVE PLEADINGS

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.

Local Rule of Practice ("LBR") 3015-1(d)(1) requires that a motion to confirm a chapter 13 plan be served on at least 35 days' notice and provide for notice that written opposition is required. LBR 9014-1(e)(1) requires that all pleadings filed in support of a motion be served on or before the date that the motion and related pleadings are filed with the court, and LBR 9014-1(e)(2) requires that a certificate of such service be filed with the court concurrently with, or not more than three (3) days after, the filing of such pleadings with the court. Here, the notice of motion and related pleadings were filed with the court on September 14, 2023. Doc. ##111-113. There was no certificate of service filed with the court by September 17, 2023 showing that the notice of motion and related pleadings filed on September 14, 2023 were served on interested parties on or before the date those documents were filed with the court.

Further, the notice of hearing filed in connection with this motion (Doc. #112) does not comply with LBR 9014-1(f)(1) and LBR 9014-1(d)(3)(B)(i)-(iii).

LBR 3015-1(d)(1) requires the debtor's motion to confirm his plan to be filed in compliance with LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires opposition to a motion to be in writing and filed and served at least 14 days prior to the hearing date. LBR 9014-1(d)(3)(B)(i) requires the notice to advise potential respondents whether written opposition is required and, if written opposition is required, the deadline for filing written opposition and the names and addresses of the persons who must be served with any opposition. LBR 9014-1(d)(3)(B)(ii) further provides "[i]f written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition." LBR 9014-1(d)(3)(B)(iii) requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the notice of hearing does not provide any of the information required by LBR 9014-1(f)(1) and LBR 9014-1(d)(3)(B)(i)-(iii).

Because there is no proof of service showing that the chapter 13 plan and related notice of hearing and motion were served on interested parties at least 35 days before the hearing and because the notice of hearing fails to inform potential respondents that written opposition is required and how and when to file and serve such written opposition as well as provide the other notices required by this court's local rules, this motion is denied without prejudice for improper service.

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

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

8. [23-10168](#)-A-13      **IN RE: ROBERT IRVIN**  
[MHM-2](#)

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

MICHAEL MEYER/MV

NO RULING.

MOTION TO DISMISS CASE  
8-10-2023    [\[94\]](#)

MICHAEL MEYER/MV

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted in part; the case will be converted to chapter 7.

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

This motion was set for hearing on at least 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the 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 default of the debtor is entered. Because the court intends to convert this case to chapter 7, the matter will proceed as scheduled.

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, Robert Shane Irvin ("Debtor"), that is prejudicial to creditors. Doc. #94. Specifically, Trustee asks the court to dismiss this case for the failure of Debtor to confirm a chapter 13 plan. Id. Debtor's bankruptcy case was filed on January 31, 2023, and no chapter 13 plan has been confirmed in this case. Id. Debtor did not file timely opposition to 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).

Here, there is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by Debtor that is prejudicial to creditors because Debtor filed this chapter 13 bankruptcy case on January 31, 2023, and has not yet confirmed a chapter 13 plan. While the court has denied Debtor's latest motion to confirm a plan for improper notice, the court notes that the two objections to confirmation filed by Trustee (Doc. #117) and a secured creditor (Doc. #119) are well-taken and would not permit the proposed plan (Doc. #113) to be confirmed even if Debtor's motion to confirm the proposed plan was noticed properly.

Trustee objects to confirmation of Debtor's amended chapter 13 plan filed on September 14, 2023 (Doc. #113) (the "Plan") on the following grounds:

- (1) The Plan fails to provide for the arrears on the secured claims of Federal Home Loan Mortgage Corp. ("FHLMC") and Bank of New York Mellon f/k/a The Bank of New York as Indenture trustee for CWHEQ Revolving Home Equity Loan Trust, Series 2006-I as serviced by Specialized Loan Servicing LLC ("BONY") in the amounts set forth in their respective proofs of claim. The Plan does not provide for any arrears while FHLMC

claims arrears in the amount of \$1,434.83 and BONY claims arrears in the amount of \$82,848.42. Claims 3, 4. Once the arrears of FHLMC and BONY are taken into account, the Plan will take over 250 months to fund. The Bankruptcy Code requires that the Plan fund in no more than 60 months, so the Plan cannot be confirmed.

- (2) Trustee's objection to Debtor's claim of exemption was set for hearing on April 6, 2023, and was sustained without a hearing due to the merits of the objection and the lack of timely written opposition. Civil Minutes, Doc. #41; Order, Doc. #45. Debtor has not filed an amended Schedule C, so the liquidation requirement that must be met under the Bankruptcy Code to confirm the Plan requires that \$130,482.85 be paid to general unsecured creditors. The Plan does not provide for any payment on general unsecured claims, so the liquidation requirement to confirm the Plan has not been met and the Plan cannot be confirmed.
- (3) Debtor has not made all plan payments currently due. The court will not confirm a chapter 13 plan where the debtor is not current on plan payments.
- (4) Debtor needs to file a separate objection to the claim of BONY in order to object to that claim. While Debtor did file an objection to the proof of claim of BONY and set the hearing on that objection for August 10, 2023, Debtor's objection to that claim was overruled for improper notice. Civil Minutes, Doc. #95; Order, Doc. #102. No new objection to the claim of BONY has been filed by Debtor and set for hearing. Because Debtor's chapter 13 plan objects to BONY's claim without having filed a separate objection to claim and properly notice that claim objection for hearing, Debtor's proposed Plan cannot be confirmed.

Tr.'s Opp'n, Doc. #117. Based on Trustee's objections to confirmation of the Plan, the court would deny confirmation of the Plan.

BONY objects to confirmation of the Plan on the grounds that: (1) the Plan does not provide for the curing of the \$82,848.42 default on BONY's claim; and (2) the monthly Plan payments will be insufficient to fund the Plan once the arrears on BONY's claim are provided for fully. Doc. #119.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under section 501, is deemed allowed unless a party in interest objects. BONY filed its proof of claim on March 30, 2023. Claim 3. Debtor's prior objection to BONY's claim was overruled for improper notice and no further objection to claim has been filed.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #113. The Plan fails to account properly for BONY's claim. Claim 3; Doc. #113. Accordingly, and for the reasons explained above with respect to Trustee's objection to confirmation of the Plan, BONY's objections would preclude confirmation of the Plan.

The court notes that this is not Trustee's first motion to dismiss this case. While the court is sympathetic to the fact that Debtor is representing himself in this bankruptcy case, the court has given Debtor several chances to address the grounds for dismissal put forth by Trustee and has encouraged Debtor to engage counsel knowledgeable in chapter 13 bankruptcy work to assist Debtor



through the chapter 13 process. However, the court will not grant Debtor unlimited opportunities to address the deficiencies in this bankruptcy case. Moreover, it appears that Debtor will be unable to confirm a plan that complies with the Bankruptcy Code.

In reviewing the case, Trustee's objection to Debtor's claimed 704 exemptions was sustained. Doc. #45. A review of the court's docket shows that no amended Schedule C has been filed. Based on Trustee's objection to confirmation of the Plan, there appears to be significant non-exempt equity in Debtor's assets to be realized for the benefit of the estate if Debtor's bankruptcy case is converted to chapter 7 instead of being dismissed. Doc. #117. Thus, the court finds that conversion, rather than dismissal, is in the best interests of creditors and the estate.

Accordingly, the motion will be GRANTED IN PART, and the case will be converted.

10. [23-11779](#)-A-13     **IN RE: KRISTIN WINSOR**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
8-29-2023    [\[12\]](#)

DISMISSED 09/06/2023

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

DISPOSITION:                    Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on September 6, 2023, Doc. #17. The order to show cause will be dropped as moot. No appearance is necessary.

11. [21-10581](#)-A-13     **IN RE: ANTONIO PERALTA**  
[RSW-3](#)

MOTION TO MODIFY PLAN  
8-14-2023    [\[54\]](#)

ANTONIO PERALTA/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Denied.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the third modified chapter 13 plan. Tr.'s Opp'n, Doc. #62. The debtor filed a reply to Trustee's

opposition to confirmation of plan. Doc. ##64, 65. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered. This matter will proceed as scheduled.

Antonio Peralta ("Debtor") filed his third Amended Chapter 13 Plan (the "Plan") on August 14, 2023. Doc. #58. Trustee objects to confirmation of the Plan because the Plan provides for payments to creditors for a period longer than 5 years in violation of 11 U.S.C. § 1322(d). Tr.'s Opp'n, Doc. #62.

The Plan provides for an aggregate plan payment of \$46,846.00 through August 2023 and \$2,906.00 per month effective September 2023. Plan, Doc. #58. Trustee contends the Plan will take 62.16 months to fund as proposed and the plan payment will need to increase to \$3,058.50 commencing September 2023 for the Plan to fund in 60 months. Tr.'s Opp'n, Doc. #62. Debtor replied that he will agree to the increased plan payment of \$3,058.50 beginning September 2023. Doc. #64.

However, Debtor's amended Schedules I and J filed on August 24, 2023 do not show that Debtor has sufficient monthly income to increase his plan payments to \$3,058.50 beginning September 2023. Doc. #60. Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan in order for the court to confirm a plan. 11 U.S.C. § 1325(a)(6). The party moving to confirm the chapter 13 plan bears the burden of proof to show facts supporting the proposed plan. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997).

Here, because Debtor's amended Schedules I and J filed on August 24, 2023 do not show that Debtor has sufficient monthly income to increase his plan payments to \$3,058.50 beginning in September 2023, Debtor has not met his burden of proof to show that the Plan is feasible as required by 11 U.S.C. § 1325(a)(6).

Accordingly, Debtor's motion to confirm the Plan will be DENIED.

12. [23-10684](#)-A-13      **IN RE: CHERYL MELIZA LOPEZ**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
8-3-2023    [\[21\]](#)

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

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Denied.

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

On August 3, 2023, the chapter 13 trustee ("Trustee") moved to dismiss this bankruptcy case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors for failure to confirm a plan. Doc. #21. The debtor responded stating that the debtor's motion to confirm her first modified chapter 13 plan is set for a hearing on October 5, 2023. Doc. #33. On August 22, 2023, the debtor filed and served a motion to confirm the debtor's first modified plan and set that motion for hearing on October 5, 2023. Doc. ##27-32. That motion has been granted by final ruling, matter #13 below.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). It appears that confirmation of the debtor's first modified plan satisfies all outstanding grounds for Trustee's motion to dismiss, so there is no "cause" for dismissal under 11 U.S.C. § 1307(c)(1).

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

13. [23-10684](#)-A-13      **IN RE: CHERYL MELIZA LOPEZ**  
[RSW-1](#)

MOTION TO CONFIRM PLAN  
8-22-2023    [\[27\]](#)

CHERYL MELIZA LOPEZ/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.

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

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

14. [19-10791](#)-A-13     **IN RE: JASON/RANDI PATTERSON**  
[RSW-7](#)

MOTION TO MODIFY PLAN  
8-14-2023    [[102](#)]

RANDI PATTERSON/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.

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

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

1. [23-11907](#)-A-7     **IN RE: ARSENIO SOBERANIS SOBERANIS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
9-13-2023    [\[13\]](#)

VINCENT QUIGG/ATTY. FOR DBT.  
\$338.00 FILING FEE PAID 9/13/23

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

DISPOSITION:        The order to show cause will be vacated.

ORDER:                The court will issue an order.

The record shows that the filing fees now due have been paid. The case shall remain pending.

2. [23-11910](#)-A-7     **IN RE: TIRATH SINGH**  
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-20-2023    [\[11\]](#)

BMO BANK N.A./MV  
NEIL SCHWARTZ/ATTY. FOR DBT.  
RAFFI KHATCHADOURIAN/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 hearing.

This motion was filed and served on at least 14 days' notice 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.

The movant, BMO Bank N.A. f/k/a BMO Harris Bank, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2022 Peterbilt 579-Series tractor truck (the "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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least two pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent for August 2023 and September 2023. Decl. of Bryan Schrepel, Doc. #14. Also, Movant lacks adequate protection in the Vehicle because the Vehicle is valued at \$95,000.00 and the debtor owes \$112,402.80. Schrepel Decl., Doc. #14.

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

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

3. [23-11911](#)-A-7     **IN RE: ELVIRA RODRIGUEZ VARGAS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
9-13-2023     [\[13\]](#)

VINCENT QUIGG/ATTY. FOR DBT.  
\$338.00 FILIN FEE PAID 9/13/23

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

DISPOSITION:     The order to show cause will be vacated.

ORDER:     The court will issue an order.

The record shows that the filing fees now due have been paid. The case shall remain pending.

4. [23-11131](#)-A-7     **IN RE: JONATHAN/ALYSSA GUTIERREZ**  
[KEH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-24-2023     [\[33\]](#)

BALBOA THRIFT & LOAN/MV  
D. GARDNER/ATTY. FOR DBT.  
KEITH HERRON/ATTY. FOR MV.

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

DISPOSITION:     Denied without prejudice.

ORDER:     The court will issue an order.

The certificate of service filed in connection with this motion for relief from the automatic stay shows that the chapter 7 trustee was only served electronically pursuant to Federal Rule of Civil Procedure 5 and Federal Rules of Bankruptcy Procedure ("Rule") 7005, 9036 Service. Doc. #38. However, Rules 4001(a)(1) and 9014(b) require service of a motion for relief from the automatic stay to be made pursuant to Rule 7004. Rule 7004(b)(1) provides that

service upon an individual be made "by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Rule 9036(e) does not permit electronic service when any paper is required to be served in accordance with Rule 7004.

Because the chapter 7 trustee was not served with this motion by mail as required by Rule 7004(b)(1), the motion was not served properly on the chapter 7 trustee.

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

5. [23-11333](#)-A-7     **IN RE: DONNA MATCHETT**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
9-11-2023     [\[36\]](#)

\$188.00 FILING FEE PAID 9/12/23

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

DISPOSITION:     The order to show cause will be vacated.

ORDER:     The court will issue an order.

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

6. [23-11638](#)-A-7     **IN RE: VICKIE/DAVID CORTEZ**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-31-2023     [\[15\]](#)

AMERICREDIT FINANCIAL SERVICES, INC./MV  
PATRICK KAVANAGH/ATTY. FOR DBT.  
JOHN KIM/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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, Americredit Financial Services, Inc. dba GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2019 Chevrolet Traverse (the "Vehicle"). Doc. #15.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least one partial and two complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$2,171.76, including late fees of \$132.33. Decl. of Aaron Rangel, Doc. #17.

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

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 one partial and two complete pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

7. [23-10747](#)-A-7     **IN RE: JUAN PATINO**  
[RSW-3](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.  
9-7-2023    [\[32\]](#)

JUAN PATINO/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.

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



Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Juan Patino ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Capital One Bank (USA), N.A. ("Creditor") on the residential real property commonly referred to as 1816 El Portal Drive, Bakersfield, California (the "Property"). Doc. #32; Schedule C, Doc. #1; Schedule D, Doc. #1.

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

Debtor filed the bankruptcy petition on April 13, 2023. Doc. #1. A judgment was entered against Juan Patino in the amount of \$8,192.00 in favor of Creditor on March 8, 2022. Ex. 4, Doc. #41. The abstract of judgment was recorded pre-petition in Kern County on February 17, 2023, as document number 223019078. Id. The lien attached to Debtor's interest in the Property located in Kern County. Id. The Property also is encumbered by a deed of trust in favor of Loancare LLC in the amount \$197,695.00. Schedule D, Doc. #1. Debtor claimed an exemption of \$339,203.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$380,500.00. Decl. of Juan Patino, Doc. #34.<sup>1</sup>

Applying the statutory formula:

Amount of Creditor's judicial lien		\$8,192.00
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$197,695.00
Amount of Debtor's claim of exemption in the Property	+	\$339,203.00
		\$545,090.00
Value of Debtor's interest in the Property absent liens	-	\$380,500.00
Amount Creditor's lien impairs Debtor's exemption		\$164,590.00

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

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

---

<sup>1</sup> While Debtor scheduled the market value of the Property as of the petition date at \$380,600.00 in Schedule A/B (Doc. #1), the court will use the market value for the Property as of the petition date of \$380,500.00 as set forth in Debtor's declaration in support of the motion. Even if the court used the scheduled value of the Property of \$380,600.00, the outcome would be the same.

8. [23-11578](#)-A-7     **IN RE: GABRIEL ORTIZ**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-18-2023    [\[12\]](#)

FORD MOTOR CREDIT COMPANY LLC/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

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

The movant, Ford Motor Credit Company LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2021 Ford F150 (the "Vehicle"). Doc. #12.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least two complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$1,849.92, which includes late fees of \$15.00. Decl. of Pamela Rucker, Doc. #15.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at \$45,900.00 and the debtor owes \$49,577.18. Decl. of John Eng, Doc. #14; Rucker 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. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

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

9. [23-11578](#)-A-7     **IN RE: GABRIEL ORTIZ**  
[SKI-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-23-2023     [\[21\]](#)

SANTANDER CONSUMER USA INC./MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

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

The movant, Santander Consumer USA Inc. dba Chrysler Capital ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2021 Ram 3500 (the "Vehicle"). Doc. #21.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least eight complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$15,484.50. Decl. of Ashley Young, Doc. #24.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at \$64,325.00 and the debtor owes \$68,464.34. Young Decl., Doc. #24.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1. The Vehicle was impounded on December 16, 2022, and is in Movant's possession. Young Decl., Doc. #24.

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

1. [22-12016](#)-A-11     **IN RE: FUTURE VALUE CONSTRUCTION, INC.**  
[DMG-11](#)

CONTINUED MOTION TO BORROW  
8-23-2023    [[351](#)]

FUTURE VALUE CONSTRUCTION, INC./MV  
D. GARDNER/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:     Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on September 27, 2023. Doc. #376.

11:00 AM

1. [22-10825](#)-A-7     **IN RE: JAMIE/MARIA GARCIA**  
[22-1018](#)     [BBR-2](#)

MOTION TO AMEND SCHEDULING ORDER RE: COMPLAINT  
9-21-2023     [\[46\]](#)

AGRO LABOR SERVICES, INC. ET AL V. GARCIA ET AL  
VIVIANO AGUILAR/ATTY. FOR MV.  
OST 9/21/23

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.

On September 21, 2023, the court granted the plaintiffs' ex parte Application for Order Shortening Time to hear the plaintiffs' Motion to Amend Scheduling Order. Order, Doc. #51. This motion was set for hearing on October 5, 2023 at 11:00 a.m. pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3) 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.

Agro Labor Services, Inc. and Cal Central Harvesting, Inc. (together, "Plaintiffs") move the court pursuant to Federal Rule of Civil Procedure ("Rule") 16(b), made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7016, to extend discovery deadlines in this adversary proceeding as follows:

Deadline	Current Date	Proposed Date
Close of Fact Discovery	October 5, 2023	December 15, 2023
Designation of Experts	December 1, 2023	January 15, 2024
Designation of Rebuttal Experts	February 14, 2024	March 15, 2024
Close of Expert Discovery (including rebuttal experts)	March 15, 2024	May 28, 2024

Motion, Doc. #46.

On January 5, 2023, a scheduling order was issued in this adversary proceeding pursuant to Rule 16 and based on the joint discovery plan filed on December 29, 2022 (Doc. #31) as well as the representations of the parties at a status conference held on January 5, 2023. Doc. #35. On January 30, 2023, related adversary proceeding number 22-1020 was transferred to this department. Adv. Proc. 22-1020, Doc. #28. On February 10, 2023, adversary proceeding numbers 22-1018 and 22-1020 were consolidated, with all pleadings to be filed in adversary number 22-1018. Doc. #42.

At a hearing held on March 9, 2023, the parties agreed, among other things, for October 5, 2023 to be the close of fact discovery, December 1, 2023 to be the

deadline for designation of experts and submission of expert reports, February 14, 2024 to be the deadline for designation of rebuttal experts and submission of rebuttal expert reports, and March 15, 2024 to be the close of expert discovery (including rebuttal experts) (collectively, the "Discovery Deadlines") in the consolidated adversary proceeding. Doc. #43. An amended scheduling order was entered on March 10, 2023 and established the Discovery Deadlines in the consolidated adversary proceeding. Scheduling Order p. 2, Doc. #43. The amended scheduling order further stated that all motions seeking to modify the amended scheduling order "will be considered upon a showing of good cause and, if the request for modification is occasioned by the need for additional time to complete discovery, due diligence." Scheduling Order p. 8, Doc. #43. Plaintiffs filed this motion on September 21, 2023. Doc. #46.

Rule 16(b) requires the judge to issue a scheduling order that, once issued, "may be modified only for good cause and with the judge's consent." Rule 16(b)(4). "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the amendment. The [bankruptcy] court may modify the pretrial schedule 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'" Johnson v. Mammoth Recreations, 975 F.2d 604, 609 (9th Cir. 1992) (citations omitted).

Here, Plaintiffs seek to extend the Discovery Deadlines as set forth in the table above. Motion, Doc. #46. Although the Discovery Deadlines have not yet passed, Plaintiffs state that there remains inadequate time for Plaintiffs to propound written discovery and pursue any necessary enforcement motions prior to the Discovery Deadlines. Decl. of Kaleb L. Judy, Doc. #50.

Plaintiffs argue that good cause exists to extend the Discovery Deadlines because defendants Jamie Rene Garcia, Maria Cruz Garcia, and Adela Garcia (collectively, "Defendants") have failed to provide Plaintiffs with the initial disclosures required by Rule 26(a)(1)(A). Motion, Doc. #46; Judy Decl., Doc. #50. In addition, counsel for Plaintiffs served counsel for Defendants with written discovery requests on May 12, 2023, and Defendants have not responded to those written discovery requests. Judy Decl., Doc. #50. Plaintiffs have filed motions to compel responses to the written discovery and have set those motions for hearing on October 19, 2023. Doc. ##52-66, 72-74. Plaintiffs delayed filing the motion to compel written discovery because counsel for Plaintiffs had hoped to resolve the discovery issues informally to avoid filing motions to compel and incurring additional attorneys' fees. Judy Decl., Doc. #50. On August 28, 2023, counsel for Defendants informed counsel for Plaintiffs that the emails with Plaintiffs' discovery requests had gone into the spam folder for counsel for Defendants. Id. As a result of Defendants' delay in providing initial disclosures as well as responses to Plaintiffs' written discovery, Plaintiffs have not been in a position to conduct depositions or evaluate the need to employ experts with respect to the consolidated adversary proceeding. Id.

Rule 16(b) and this court's amended scheduling order require Plaintiffs to show their diligence with respect to discovery before this court will extend the ordered discovery deadlines. The court finds that Plaintiffs have shown their diligence and that the delay in Plaintiffs' ability to complete discovery before the Discovery Deadlines relate in large part to the failure of Defendants to provide initial disclosures as well as timely responses to written discovery to Plaintiffs. The court finds Plaintiffs have shown good cause for extending the Discovery Deadlines under Rule 16(b) and the legal authority interpreting that rule.

Accordingly, pending opposition at the hearing, this motion will be GRANTED.

2. [20-13451](#)-A-7     **IN RE: AMANDEEP SINGH**  
[21-1004](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT  
2-5-2021    [\[1\]](#)

BMO HARRIS BANK, N.A. V. SINGH  
RAFFI KHATCHADOURIAN/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

3. [20-13451](#)-A-7     **IN RE: AMANDEEP SINGH**  
[21-1004](#)     [HRH-2](#)

MOTION TO COMPEL AND/OR MOTION FOR SANCTIONS  
9-7-2023    [\[62\]](#)

BMO HARRIS BANK, N.A. V. SINGH  
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the defendant 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 defendant to this motion is entered. 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.

BMO Harris Bank N.A. ("Plaintiff") moves for an order compelling Amandeep Singh ("Defendant") to answer interrogatories and produce documents as well as awarding attorneys' fees in the amount of \$1,375.00. Doc. #62. Plaintiff moves under Federal Rule of Civil Procedure ("Rule") 37 and Rule 36, made applicable to this adversary proceeding through Federal Rules of Bankruptcy Procedure 7037 and 7036, respectively. Pl.'s Mot., Doc. #62; Ex. 1-4, Doc. #67.

On February 5, 2021, Plaintiff commenced this adversary proceeding by filing its complaint for determination of nondischargeability of debt pursuant to 11 U.S.C. §§ 523(a)(2)(A), (4) and (6) arising out of two loan security agreements. Adv. Proc. No. 21-1004, Doc. #1. Defendant filed his answer on March 8, 2021. Doc. #7. Pursuant to the Order Approving Second Stipulation to Continue Status Conference and Related Dates, fact discovery was extended from October 26, 2022 to August 14, 2023. Doc. #46. While Defendant was originally



represented by counsel, Defendant's counsel withdrew from this adversary proceeding on April 5, 2023, and Defendant now represents himself. Doc. #53.

On May 3, 2023, Plaintiff served Defendant with Plaintiff's First Set of Interrogatories, First Set of Requests for Production of Documents, and First Set of Requests for Admissions. Decl. of Raffi Khatchadourian, Doc. #64. When Plaintiff did not receive a response from Defendant to its written discovery, Plaintiff sent a meet-and-confer letter ("First Letter") to Defendant on June 20, 2023 requesting a response no later than June 26, 2023. Khatchadourian Decl. at ¶ 5, Doc. #64. Plaintiff did not receive a response to the First Letter. Id. at ¶ 6. On August 17, 2023, Plaintiff, using online resources, located a phone number that matched the current address that Plaintiff has for Defendant. Decl. of Stephanie J. Schiern, Doc. #66. Plaintiff attempted to reach Defendant at that number, but the phone number was no longer in service. Schiern Decl. at ¶ 2, Doc. #66.

On August 18, 2023, Plaintiff sent another meet-and-confer letter ("Second Letter") to Defendant via regular mail, certified mail, and Federal Express. Schiern Decl. at ¶ 3, Doc. #66. The Second Letter was delivered to Defendant on August 21, 2023. Id. at ¶ 2; Ex. 2, Doc. #67. As of September 7, 2023, Plaintiff has not received a response from Defendant to the Second Letter. Id. at ¶ 4. On August 31, 2023, Plaintiff's attorney emailed Defendant's previous attorney, Robert S. Williams, to request Defendant's current contact information. Id. at ¶ 5. On August 31, 2023, Mr. Williams provided Plaintiff's attorney with last known telephone numbers and email address for Defendant. Id. at ¶ 6. On August 31, 2023, Plaintiff's attorney called the two phone numbers provided by Mr. Williams and received a message that the call could not be completed as dialed for both phone numbers. Id. at ¶ 7. On August 31, 2023, Plaintiff's attorney emailed Defendant requesting that Defendant contact Plaintiff's attorney by Tuesday, September 5, 2023 to discuss responding to the written discovery, but Plaintiff's attorney did not receive a response to this email. Id. at ¶ 8.

Defendant never responded to the written discovery, the First Letter, the Second Letter, or the email sent on August 31, 2023. Motion, Doc. #62. Further, Plaintiff was able to obtain three possible phone numbers for Defendant, none of which were in service. Id. Accordingly, Plaintiff filed the instant motion on September 7, 2023. Id.

"On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery." Rule 37(a)(1). The moving party must certify that the moving party "has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." Rule 37(a)(1). Rule 37(a)(5)(i) further requires that the court must not order payment of reasonable expenses incurred in filing a motion to compel discovery if Plaintiff "filed the motion before attempting in good faith to obtain the . . . discovery without court action[.]" Fed. R. Civ. P. 37(a)(5)(i). At a minimum, to establish good faith, counsel for Plaintiff should have "attempted to speak with [Defendant] directly, either by phone or in person, regarding [Defendant's] failure to respond to discovery requests." Benyamini v. O'Brian, 2017 U.S. Dist. LEXIS 144437, at \*7-8 (E.D. Cal. Sept. 5, 2017).

Here, before filing this motion, Plaintiff sent two meet-and-confer letters, including sending one of the meet-and-confer letters via certified mail and Federal Express, and an email to Defendant to which Defendant did not respond. Plaintiff also attempted to speak to Defendant directly by phone regarding Defendant's failure to respond to discovery requests by obtaining three possible phone numbers for Defendant, none of which were in service.

Because Plaintiff filed this motion after attempting in good faith to confer with Defendant to obtain Defendant's response to Plaintiff's Requests for Production, Interrogatories, and Admissions, Plaintiff's motion and Plaintiff's request for attorney's fees in the amount of \$1,375.00 is appropriate.

Accordingly, the motion is GRANTED. By no later than 28 days after service of a notice of the entry of the order granting this motion, Defendant shall:

(a) provide written responses to Plaintiff's First Set of Interrogatories; (b) provide written responses to Plaintiff's First Set of Requests for Admissions; and (c) produce documents responsive to Plaintiff's First Set of Requests for Production of Documents, and specifically state in writing as to each request that Defendant determines he has no responsive documents within his possession, custody, or control. Service of the notice of entry of the order granting this motion shall be accompanied by a copy of the written discovery that is the subject of this motion. In addition, Plaintiff is awarded \$1,375.00 in attorney's fees for bringing this motion.

Defendant is cautioned that any failure to obey this order may result in sanctions, including the rendering of a default judgment against Defendant upon motion by Plaintiff pursuant to LBR 9014-1(f)(1).

4. [23-11085](#)-A-7     **IN RE: GALINA DEER**  
[23-1036](#)     [CAE-2](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE DISCLOSURE STATEMENT  
9-11-2023     [\[8\]](#)

FIRST NATIONAL BANK OF OMAHA V. DEER

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

DISPOSITION:     The order to show cause will be vacated.

ORDER:     The court will issue an order.

The record shows that the missing corporate disclosure statement was filed on September 12, 2023. Doc. #10. Therefore, this order to show cause will be VACATED.