



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, November 3, 2022  
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.***

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## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [18-10101](#)-A-13     **IN RE: JOSEPH/NANCY MOON**  
[RSW-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-20-2022    [[119](#)]

NANCY MOON/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.

Debtors Joseph Moon ("Moon") and Nancy Moon (collectively, "Movants") seek relief from the automatic stay under 11 U.S.C. § 362(d)(1) to continue the defense of the disputed claim asserted by John Bomer in the state court lawsuit styled as "John Bomer v. Occidental Petroleum Corporation, Matthew James Mancha and Atlas Energy Solutions, LLC, Cause No.: 20-04-23490-CVR; In the 143rd District Court of Reeves County, Texas" ("State Court Suit") and permit Occidental Petroleum Corporation ("OXY") to accept Moon's tender of defense and indemnity. Doc. #119

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause. "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). When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; and (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties. In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

The State Court Suit has been pending since April 8, 2020, discovery is ongoing, and a trial date has been set. Doc. #119. The State Court Suit includes a jury demand; therefore, any change in forum at this stage may

prejudice the parties involved by upsetting the trial date. Id. In addition, continuance of the State Court Suit will resolve the claims against Moon in the most expeditious and economic manner. Id. Moreover, prosecution of the State Court Suit will not interfere with Movants' bankruptcy case nor harm any creditors. Id. The plaintiff in the State Court Suit has agreed to seek recovery of any judgment against Moon solely from insurance coverage of OXY, and Movants' bankruptcy estate will not be held liable for payment of any judgment awarded against Moon. Id. Finally, the cost associated with the continued defense of the State Court Suit will be borne by OXY, and OXY has agreed to honor its defense and indemnity obligations to undertake the defense of Moon in the State Court Suit. Id. For these reasons, the court finds that cause exists to lift the stay.

Accordingly, this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movants to continue the defense of the disputed claim in the State Court Suit and to permit OXY to accept Moon's tender of defense and indemnity. No other relief is awarded.

Movants also request waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). 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). The purpose of Rule 4001(a)(3) "is to permit a short period of time for the debtor or other party opposing relief to seek a stay pending an appeal of the order." 9 COLLIER ON BANKRUPTCY ¶ 4001.05 (Richard Levin & Henry J. Sommer eds., 16th ed. 2022); accord Federal Rule of Bankruptcy Procedure 4001, Committee Notes on Rules - 1999 Amendment ("Paragraph (a)(3) is added to provide sufficient time for a party to request a stay pending appeal of an order granting relief from an automatic stay before the order is enforced or implemented."). Because Movants are the debtors, the court will waive the 14-day stay unless opposition is presented at the hearing.

2. [22-11707](#)-A-13      **IN RE: JUAN MARTINEZ AND CONSUELO DE MARTINEZ**  
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
10-18-2022    [\[19\]](#)

CONSUELO DE MARTINEZ/MV  
PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

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

Debtors Juan Martinez and Consuelo Avila De Martinez (collectively, "Debtors") move the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c) (3) (B) and (C).

Debtor Consuelo Avila De Martinez ("Martinez") had a Chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 18-10438 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on February 12, 2018 and dismissed on January 19, 2022. Decl. of Consuelo Avila De Martinez, Doc. #21. Under 11 U.S.C. § 362(c) (3) (A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtors filed this case on October 4, 2022. Petition, Doc. #1. The automatic stay will terminate in the present case on November 3, 2022.

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

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

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c) (3) (C). Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted) vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019).

In this case, the presumption of bad faith arises. Martinez failed to perform the terms of a confirmed plan in the Prior Case. A review of the court's docket in the Prior Case discloses that a first modified chapter 13 plan was confirmed on October 2, 2020, the Chapter 13 trustee ("Trustee") filed a Notice of Default and Intent to Dismiss Case (the "Notice") on December 6, 2021, and the court dismissed the Prior Case upon Trustee's declaration that Martinez failed to address the Notice in the time and manner prescribed by LBR 3015-1(g). See Case No. 18-10438, Doc. ##72, 74, 76. Martinez acknowledges that the Prior Case was dismissed for failure to timely pay plan payments. Martinez Decl., Doc. #21.

In support of this motion to extend the automatic stay, Martinez declares that the plan payments in the Prior Case were not made because Debtors caught COVID in November 2021 and traveled to Mexico for treatment. Martinez Decl., Doc. #21. Debtors were ill for several months and Martinez was unable to catch up on her plan payments in the Prior Case after she returned to work. Id. Debtors' monthly income has increased since the Prior Case. Compare Am.

Schedule I in Prior Case, Doc. #52 with Schedule I, Doc. #13. Debtors filed a proposed plan on October 18, 2022. Doc. #15. Debtors have the income ability to maintain plan payments and intend on completing their plan. Martinez Decl., Doc. #21. Debtors' Schedules I and J filed in this case list monthly income of \$6,115.43 and expenses of \$2,609.93, resulting in monthly net income of \$3,545.50 of which Debtors propose to apply \$3,545.00 to plan payments in this case. Schedules I and J, Doc. #13; Martinez Decl., Doc. #21.

The court is inclined to find that the inability of Martinez to work for several months after catching COVID prevented Martinez from making plan payments in the Prior Case and rebuts the presumption of bad faith that arose from the failure to perform the terms of a confirmed plan in the Prior Case. The court also is inclined to find that Debtors' petition commencing this case was filed in good faith. Moreover, the court recognizes that the increased monthly income represents a substantial change in Debtors' financial affairs since dismissal of the Prior Case.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes only as to those parties identified in Debtors' motion (Doc. #19), unless terminated by further order of the court.

3. [22-11547](#)-A-13      **IN RE: PEDRO RODRIGUEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
9-20-2022    [\[13\]](#)

CASE DISMISSED 09/26/2022

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 26, 2022, Doc. #19. The Order to Show Cause will be dropped as moot. No appearance is necessary.

4. [22-11151](#)-A-13      **IN RE: KARLA GARCIA**  
[MHM-2](#)

MOTION TO DISMISS CASE  
9-19-2022    [\[38\]](#)

MICHAEL MEYER/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 set for hearing on 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). 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 debtor 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 asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors. Doc #38. Specifically, the trustee asks the court to dismiss this case for the debtor's failure to:

- (1) appear at the scheduled § 341 meeting of creditors;
- (2) provide the trustee with any requested documents; and
- (3) file and set a modified plan for hearing with notice to creditors.

Doc. #38. The debtor did not oppose this 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 (a) appear at the scheduled 341 meeting of creditors, (b) provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4), and (c) file and set a modified plan for hearing with notice to creditors.

Because the debtor has failed to appear at the meeting of creditors, dismissal rather than conversion is appropriate.

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

5. [22-11281](#)-A-13      **IN RE: DWAYNE HAUGHTON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
10-3-2022    [\[39\]](#)

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

DISPOSITION:      The OSC will be vacated.

ORDER:              The court will issue an order.

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

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

6. [22-11281](#)-A-13      **IN RE: DWAYNE HAUGHTON**  
[MHM-1](#)

MOTION TO DISMISS CASE  
9-19-2022    [\[31\]](#)

MICHAEL MEYER/MV

NO RULING.

7. [19-12898](#)-A-13      **IN RE: JEFFREY VANDERNOOR**  
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE  
8-4-2022    [\[125\]](#)

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

TENTATIVE RULING:      This matter will proceed as scheduled.

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

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice 9014-1(f)(1). The debtor timely filed written opposition on August 25, 2022. Doc. #129.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(6) because the debtor has failed to make all plan payments due under the confirmed plan. Doc #125. As of August 4, 2022, the delinquent plan payments were \$4,665.62. Decl. of Kelsey A. Seib, Doc. #127. Additional monthly plan payments of \$3,057.81 came due on August 25, 2022, and on the 25th of each month thereafter.



The debtor opposes the motion on the basis that the debtor filed a motion to confirm a modified plan. Doc. #129.

On August 31, 2022, the debtor filed a motion to confirm a modified plan. Doc. ##131-136. On September 19, 2022, the chapter 13 trustee filed an objection to confirmation of the modified plan. Doc. #142. The court continued the hearing to confirm the modified plan to permit the debtor to address the objections filed by the trustee or propose a new modified plan. Order, Doc. #147. The debtor did neither of these things. Instead, on October 28, 2022, the debtor withdrew his motion to confirm the modified plan. Doc. #150. There is not currently pending before this court a motion to confirm a modified plan to address the delinquent plan payments that are the basis for this motion to dismiss.

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

A review of the debtor's Schedules A/B and D shows that there is non-exempt equity to be liquidated for the benefit of creditors. Schedules A/B and D, Doc. #1. In addition, the order confirming the latest plan shows \$9,960.00 must be paid under the plan to priority and general unsecured creditors to meet the chapter 7 liquidation test. Doc. #124. Because there appears to be non-exempt equity in the debtor's assets to be realized for the benefit of the estate, 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.

8. [19-12898](#)-A-13      **IN RE: JEFFREY VANDERNOOR**  
[RSW-5](#)

CONTINUED MOTION TO MODIFY PLAN  
8-31-2022    [\[131\]](#)

JEFFREY VANDERNOOR/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:                      Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on October 28, 2022. Doc. #150.

10:00 AM

1. [22-11120](#)-A-7     **IN RE: SALVADOR/LETICIA AREVALO**  
[JMV-1](#)

MOTION TO SELL  
10-11-2022    [[16](#)]

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

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.

The Clerk's Matrix of Creditors used by the moving party to serve notice of the motion does not comply with Local Rule of Practice ("LBR") 7005-1(c), which requires that the Clerk's Matrix of Creditors used to serve a notice be downloaded not more than 7 days prior to the date notice is served. Here, the moving party served notice of the motion on October 11, 2022 using a Clerk's Matrix of Creditors that was generated on September 16, 2022. Doc. #20. Accordingly, service of notice of the motion does not comply LBR 7005-1(c).

2. [22-11221](#)-A-7     **IN RE: JACQUELINE/ALEXIS PAYAN**  
[JMV-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT  
SEC. 341(A) MEETING OF CREDITORS  
9-9-2022    [[11](#)]

D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION:     Conditionally denied.

ORDER:             The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtors shall attend the meeting of creditors rescheduled for November 4, 2022 at 11:00 a.m. If the debtors fail to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF  
THE DEBTOR, MOTION TO EXTEND TIME TO FILE A MOTION TO DISMISS CASE  
UNDER SEC. 707(B)  
10-6-2022    [\[15\]](#)

TRACY DAVIS/MV  
D. GARDNER/ATTY. FOR DBT.  
JORGE GAITAN/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, 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.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"), moves for an order extending the time for filing both a complaint objecting to the discharge in the chapter 7 bankruptcy case of Jacqueline Marie Payan and Alexis Donyl Payan (collectively, "Debtors") under 11 U.S.C. § 727 as well as a motion to dismiss Debtors' bankruptcy case under § 707(b). Doc. #15.

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). UST's motion was filed within 60 days of 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 because Debtors' 341 meeting of creditors has been continued to November 4, 2022, and UST has attempted, unsuccessfully, to commence review of Debtors' case due to Debtors' failure to appear at the 341 meeting of creditors and ongoing failure to provide all documents responsive to the UST's request. Doc. #15. UST needs additional time to investigate the veracity of Debtors' assets. Id.

In calendar matter #2 above, Debtors have opposed dismissal of their bankruptcy case for their failure to appear at their initial 341 meeting of creditors. Pursuant to the final ruling in that matter, the court has extended the time

prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to Debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, to 60 days after the conclusion of the meeting of creditors.

Accordingly, this motion is GRANTED in a manner consistent with the order to be entered with respect to the conditional dismissal in calendar matter #2. Specifically, the time for UST to file a complaint objecting to Debtors' discharge and for UST to file a motion to dismiss Debtors' case for abuse under § 707(b), other than presumed abuse, is extended to 60 days after the conclusion of the meeting of creditors. The time for UST to file a motion to dismiss Debtors' case for presumed abuse under § 707(b) is extended to November 30, 2022.

4. [21-10561](#)-A-7     **IN RE: SHELTON MCKENZIE**  
[PLG-2](#)

CONTINUED MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION  
7-28-2022    [\[23\]](#)

SHELTON MCKENZIE/MV  
L. TEGAN RODKEY/ATTY. FOR DBT.  
CONT'D TO 12/8/22 PER ECF ORDER #38, MOTION WITHDRAWN

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

DISPOSITION:                Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on November 2, 2022. Doc. #39.

5. [22-11282](#)-A-7     **IN RE: NIKKI JO SALCEDA**  
[UST-1](#)

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE WITHOUT  
ENTRY OF DISCHARGE  
9-30-2022    [\[18\]](#)

TRACY DAVIS/MV  
DANIEL MARCH/ATTY. FOR DBT.  
JORGE GAITAN/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 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.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"), moves the court for an order approving the *Stipulation to Dismiss Chapter 7 Case Without Entry of Discharge* filed as Doc. #20, UST-1 (the "Stipulation"). According to the Stipulation, Nikki Jo Victoria Salceda ("Debtor") desires to voluntarily dismiss this chapter 7 case prior to entry of discharge. Doc. #20.

A debtor does not have an absolute right to dismiss a voluntary chapter 7 case. Bartee v. Ainsworth (In re Bartee), 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004). Section 707 of the Bankruptcy Code governs dismissal of a chapter 7 case, whereby the court "may dismiss a case under this chapter only after notice and a hearing and only for cause." 11 U.S.C. § 707(a); In re Kaur, 510 B.R. 281, 285 (Bankr. E.D. Cal. 2014). Regarding cause, a voluntary chapter 7 debtor is entitled to dismissal so long as such dismissal will cause no legal prejudice to interested parties. Kaur, 510 B.R. at 286 (citations omitted).

The court finds that dismissing Debtor's voluntary chapter 7 case will cause no legal prejudice to interested parties. UST states that no bad faith or abusive conduct exists that would limit Debtor's right to dismissal. Doc. #18. Further, UST has stipulated to the dismissal, and no party in interest has objected. The court finds cause exists to dismiss Debtor's voluntary chapter 7 case.

Accordingly, this motion is GRANTED.

1. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**  
[LKW-5](#)

MOTION FOR ORDER AUTHORIZING DEBTORS TO ENTER INTO AGRICULTURAL LEASE  
 9-28-2022 [[247](#)]

JATINDERJEET SIHOTA/MV  
 LEONARD WELSH/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.

Ajitpal Singh and Jatinderjeet Kaur Sihota, the debtors and debtors in possession in this chapter 12 case (collectively, "DIP"), move for authorization to enter into an agriculture lease under which DIP will lease about 16 acres of their farmland located in Fresno County, California ("16 Acres") to Harpreet Kloy ("Lessee") for a term of 15 years pursuant to the terms described in the agriculture lease dated September 7, 2022 ("Lease"). Ex. A, Doc. #250.

Lessor	Location	Term of Lease
Ajitpal Singh and Jatinderjeet Kaur Sihota 7044 E. Saginaw Selma, CA 93662	6936 W. Saginaw Ave. Selma, CA, Fresno County APNs: 385-061-30 385-061-31	September 1, 2022 through August 31, 2037

Section 363 permits the debtor in possession to lease property outside the ordinary course of business after notice and a hearing. 11 U.S.C. § 363(b)(1).

Under § 363(b), a debtor in possession that wishes to enter into a post-petition lease of property outside the ordinary course of business must demonstrate that such disposition has a valid business justification. 240 N. Brand Partners v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996).

Here, DIP state that entry into the Lease will allow DIP to receive (1) the payment of real property taxes (\$5,780.82) and 10 percent crop-share rent from the net profits of the crops grown on the 16 Acres, and (2) the increase in value of DIP's farmland with the long-term crops that will be planted on the 16 Acres at the Lessee's expense. Decl. of Jatinderjeet Kaur Sihota, Doc. #249. DIP believe that entry into Lease will not harm or prejudice any other party in interest, including Nebraska State Bank ("NSB"), which holds a first deed of trust against the 16 Acres. Sihota Decl., Doc. #249. The Lease will be junior and subordinate to the lien of NSB, and the tree fruits to be grown by the Lessee on the 16 Acres will increase the value of NSB's collateral. Id. The court finds that DIP's decision is based on sound business judgment.

Accordingly, the motion is GRANTED and DIP are authorized to enter into the Lease in conformance with DIP's motion. Doc. #247.

2. [21-12348](#)-A-11     **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**  
[IJL-6](#)

AMENDED MOTION FOR COMPENSATION FOR IGNACIO J. LAZO, DEBTORS ATTORNEY(S)  
10-7-2022     [\[144\]](#)

IGNACIO LAZO/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 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(iii), which 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. The court encourages counsel 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.

Cadden & Fuller LLP ("Movant"), counsel for the debtor and debtor in possession Juarez Brothers Investments, LLC (collectively, "DIP"), requests allowance of interim compensation in the amount of \$113,210.00 and reimbursement for expenses in the amount of \$852.06 for services rendered from February 1, 2022 through August 31, 2022. Ex. A, Doc. #142, Doc. #144. Movant's first two fee applications were rejected by the court, so time and costs were incurred to

generate a new notice and to re-serve the moving papers. Decl. of Ignacio J. Lazo, Doc. #141. Movant believes that it is inappropriate for DIP to bear the cost of addition fees because of these addition filings and requests the court reduce the amount approved for payment by \$12,650.00, so that the amount approved for payment is \$101,412.06. Lazo Decl, Doc. #141, Doc. #144. This is Movant's second fee application in this case. The court has previously approved a total of \$70,845.60 in interim fees and expenses, of which \$70,845.60 has been paid to Movant. Doc. #144.

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

Movant's services included, without limitation: (1) providing general case administration; (2) preparing, filing, and serving an adversary proceeding against Grimmway Enterprise, Inc. ("Grimmway") to quiet title to the DIP's primary asset; (3) conducting legal research in preparation for drafting opposition to motion to dismiss in the adversary proceeding; (4) preparing, revising, and finalizing memorandum of points of authorities in opposition to Grimmway's motion to dismiss in the adversary proceeding; (4) reviewing and sorting documents received from DIP in connection with preparing to comply with Rule 26(a) Initial Disclosure requirements; (5) reviewing documents received from DIP and generated by counsel for Grimmway in two prior state court actions in connection with generating the Rule 26 Report; (6) drafting section of the Rule 26 Report regarding documents; (7) reviewing, revising, and supplementing proposed joint Rule 26(f) Report from Grimmway's counsel; (8) drafting, reviewing, revising, and supplementing DIP's monthly operating reports; (9) preparing bankruptcy case status report; (10) reviewing and evaluating the merits of proofs of claim accumulated since November 2021; and (11) preparing and prosecuting fee and employment applications. Lazo Decl., Doc. #141; Ex. A, Doc. #142. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$100,560.00 and reimbursement of expenses in the amount of \$852.06. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.



MOTION FOR ORDER AUTHORIZING DEBTORS TO ENTER INTO LEASE  
9-28-2022    [\[492\]](#)

BALVINDER KAUR/MV  
LEONARD WELSH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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). Creditor Farm Credit West, PCA ("FCW") submitted a conditional statement of non-opposition on October 4, 2022. Doc. #499. The failure of other 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 non-responding 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.

Bhajan Singh and Balvinder Kaur, the debtors and debtors in possession in this chapter 12 case (collectively, "DIP"), move for authorization to enter into an agriculture lease under which DIP will lease about 40 acres of their farmland located in Fresno County, California ("40 Acres") to Harpreet Kloy ("Lessee") for a term of 15 years pursuant to the terms described in the agriculture lease dated September 7, 2022 ("Lease"). Ex. A, Doc. #494.

Lessor	Location	Term of Lease
Bhajan Singh and Balvinder Kaur 7044 E. Saginaw Selma, CA 93662	East line of S. Thompson Ave. 025 miles S. of E. Kamm Ave. City of Selma, Fresno County APNs: 393-280-16S	September 1, 2022 through August 31, 2037

Pursuant to the conditional non-opposition, FCW does not oppose this motion provided that entry into the Lease does not, and is not considered or construed to, elevate: (a) the priority of the Lease above any of FCW's liens and deeds of trusts, which shall remain senior in priority; and (b) the right of first refusal contained in the Lease above any of FCW's lien and deeds of trust, which shall remain senior in priority. Doc. #499. FCW does not consent to any form of priming its valid, perfected liens. Id. FCW requests that the order approving this motion provide language indicating that nothing in the motion or the Lease has the effect of priming any of FCW's lien and deed of trust, which shall remain senior in priority. Id.

Section 363 permits the debtor in possession to lease property outside the ordinary course of business after notice and a hearing. 11 U.S.C. § 363(b)(1).

Under § 363(b), a debtor in possession that wishes to enter into a post-petition lease of property outside the ordinary course of business must demonstrate that such disposition has a valid business justification. 240 N. Brand Partners v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996).

Here, DIP state that entry into the Lease will allow DIP to receive (1) the payment of annual real property taxes associated with the 40 Acres (\$5,316.50); (2) the payment of a 10 percent crop-share rent from the net profits of the crops grown on the 40 Acres during the term of Lease; and (3) the benefits of the increase in value of DIP's farmland with the planting of a long-term crop on the 40 Acres at the Lessee's expense. Decl. of Bhajan Singh, Doc. #495. DIP believe that entry into the Lease will not harm or prejudice any other party in interest, including FCW, which holds a first deed of trust against the 40 Acres. Singh Decl., Doc. #495. The Lease will be junior and subordinate to the lien of FCW, and the tree fruits to be grown by the Lessee on the 40 Acres will increase the value of FCW's collateral. Id. The court finds that DIP's decision is based on sound business judgment.

Accordingly, the motion is GRANTED and DIP are authorized to enter into the Lease in conformance with DIP's motion. Doc. #492. To address FCW's conditional non-opposition, counsel for FCW shall approve the form of the proposed order granting this motion before the proposed order is submitted to the court.

11:00 AM

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

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE DISCLOSURE STATEMENTS  
10-4-2022    [[10](#)]

AGRO LABOR SERVICES, INC. ET AL V. GARCIA ET AL  
RESPONSIVE PLEADING

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

DISPOSITION:        The OSC will be vacated.

ORDER:                The court will issue an order.

The record shows that the missing corporate disclosure statements were filed on October 5, 2022. Doc. #12, 13. Therefore, this order to show cause will be VACATED.

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

STATUS CONFERENCE RE: COMPLAINT  
8-19-2022    [[1](#)]

AGRO LABOR SERVICES, INC. ET AL V. GARCIA ET AL  
VIVIANO AGUILAR/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:        Continued to January 5, 2023 at 11:00 a.m.

ORDER:                The court will issue an order.

Pursuant to the plaintiff's status conference statement filed on October 20, 2022 (Doc. #20), the status conference will be continued to January 5, 2023 at 11:00 a.m.

On or before December 29, 2022, the parties shall file either the discovery plan as required by the Order to Confer on Initial Disclosures and Setting Deadlines filed in this adversary proceeding on August 22, 2022, Doc. #5, or a joint status report.