



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, November 9, 2023
Department A – 510 19th Street
Bakersfield, California**

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

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

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.
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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. [18-13809](#)-A-13 **IN RE: MARY GUTIERREZ**
[MHM-3](#)

MOTION TO DISMISS CASE
9-22-2023 [\[47\]](#)

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

NO RULING.

2. [19-10009](#)-A-13 **IN RE: MATTHEW REGPALA**
[PK-4](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
10-19-2023 [\[75\]](#)

PATRICK KAVANAGH/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.

Law Offices of Patrick Kavanagh ("Movant"), counsel for Matthew Thomas Regpala ("Debtor"), the debtor in this chapter 13 case, requests allowance of final compensation in the amount of \$1,080.00 and reimbursement for expenses in the amount of \$55.32 for services rendered from April 17, 2020 through October 15, 2023. Ex. A, Doc. 75. Debtor's confirmed plan provides for \$7,345.00 in attorney's fees to be paid through the plan in addition to a \$655.00 pre-petition retainer. Plan, Doc. ##19, 60. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of \$6,570.00 and no reimbursements. Orders, Doc. ##69, 72. Debtor reviewed the second and final fee application and has no objection. Doc. #75.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services

rendered relating to: (1) communicating with Debtor regarding status of the bankruptcy case and fiscal year reporting; (2) conducting claim administration and claim objections; and (3) preparing for discharge and case closing. Ex. A, Doc. #75. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

Pending opposition at the hearing, this motion will be GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, in addition to compensation requested by this motion in the amount of \$1,080.00 and reimbursement for expenses in the amount of \$55.32, to be paid in a manner consistent with the terms of the confirmed plan.

3. [22-11711](#)-A-13 **IN RE: CHRISTINA MARTINEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
9-12-2023 [[25](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

4. [22-11919](#)-A-7 **IN RE: DAYANA GONZALEZ DELGADO**
[MHM-3](#)

MOTION TO DISMISS CASE
9-12-2023 [[55](#)]

D. GARDNER/ATTY. FOR DBT.
CONVERTED TO CHAPTER 7 - 10/16/23

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

A notice of voluntary conversion was entered on October 16, 2023. Doc. #61. Therefore, this motion will be DENIED AS MOOT.

5. [23-11523](#)-A-13 **IN RE: JOSE TIRADO PEREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-12-2023 [[74](#)]

\$78.00 INSTALLMENT PAYMENT 10/16/23

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees listed in this order to show cause have been paid.

6. [23-11523](#)-A-13 **IN RE: JOSE TIRADO PEREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-17-2023 [[78](#)]

\$78.00 INSTALLMENT PAYMENT 11/6/23

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees listed in this order to show cause have been paid. The case shall remain pending.

7. [23-11029](#)-A-13 **IN RE: JITMA MANGOIG**
[MHM-1](#)

MOTION TO DISMISS CASE
10-4-2023 [[33](#)]

ROBERT WILLIAMS/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 to dismiss on November 3, 2023. Doc. #39.

8. [23-11229](#)-A-13 **IN RE: DUNCAN NORWOOD**
[RSW-2](#)

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

DUNCAN NORWOOD/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
PLAN WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the plan on October 24, 2023. Doc. #69.

9. [23-11229](#)-A-13 **IN RE: DUNCAN NORWOOD**
[RSW-3](#)

MOTION TO CONFIRM PLAN
10-5-2023 [\[60\]](#)

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

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 set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). On October 23, 2023, the chapter 13 trustee Michael Meyer ("Trustee") filed an objection to confirmation of the debtor's modified plan (the "Plan"). Tr.'s Obj., Doc. #67. On November 1, 2023, the debtor filed a reply to Trustee's opposition. Reply, Doc. #71. 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.

Trustee objects to confirmation of the Plan because: (1) the Plan fails to comply with the provisions of title 11 pursuant to 11 U.S.C. § 1325(a)(1) because the debtor has yet to provide a Class 1 Checklist for Shellpoint Mortgage Servicing listed in Class 1 of the Plan; (2) the Plan provides for payments to creditors for a period longer than 5 years in violation of 11 U.S.C. § 1322(d); (3) the Plan fails to provide for the value, as of the effective date of the Plan, of property to be distributed under the Plan on account of each allowed unsecured claim that is at least the amount that would

be paid on such claim if the estate of the debtor was liquidated under a chapter 7 case on such date as required by 11 U.S.C. § 1325(a)(4); and (4) the debtor will be unable to make all payments and comply with the Plan as required by 11 U.S.C. § 1325(a)(6). Tr.'s Obj., Doc. #67.

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. 11 U.S.C. § 1325(a)(6). In addition, 11 U.S.C. § 1322(d) requires all chapter 13 plan payments to complete within 5 years. 11 U.S.C. § 1322(d). 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).

The Plan provides for a plan payment of \$1,275.00 for 60 months. Am. Plan, Doc. #64. Trustee contends that Plan would take 67.68 months to fund, so the Plan payments need to increase to \$1,320.45 per month for 60 months in order for the Plan to fund in 60 months. Tr.'s Obj., Doc. #67. Further, the Plan payments are delinquent by \$267.00 through September 2023. Id. On November 1, 2023, the debtor agreed to increase his plan payments to \$1,320.45 for 60 months and pay interest to unsecured creditors. Reply, Doc. #71. The debtor further states that he provided the Shellpoint Class 1 Checklist and will be able to pay into the Plan as required. Id.

The debtor's Schedules I and J filed on July 4, 2023 show that the debtor has sufficient monthly income to increase his plan payments to \$1,320.45. Doc. #22. According to the debtor's Schedules I and J, the debtor has a monthly net income of \$1,550.00. Schedules I & J, Doc. #22.

Accordingly, so long as the debtor is current on his Plan payments and has provided the Shellpoint Class 1 Checklist, Trustee's opposition will be **OVERRULED**, and the motion to confirm will be **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.

10. [23-10937](#)-A-13 **IN RE: JAMES CLARK**
[MHM-1](#)

MOTION TO DISMISS CASE
9-11-2023 [\[15\]](#)

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 to dismiss on November 6, 2023. Doc. #25.

11. [23-10943](#)-A-13 **IN RE: DE QIANG/AMY FENG**
[MHM-3](#)

MOTION TO DISMISS CASE
9-26-2023 [\[61\]](#)

MICHAEL MEYER/MV
MICHAEL REID/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to November 16, 2023, at 9:30 a.m.

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

The debtors timely filed written opposition on October 9, 2023. Doc. #72. The court is inclined to continue the trustee's motion to dismiss to November 16, 2023, at 9:30 a.m., to be heard in connection with the debtors' motion to confirm plan (WLG-2) also set for hearing on that date and time.

12. [21-10051](#)-A-13 **IN RE: JUAN/DENICE VASQUEZ**
[RSW-1](#)

MOTION TO INCUR DEBT
10-26-2023 [\[35\]](#)

DENICE VASQUEZ/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.

Juan Vasquez, III and Denice Vasquez (together "Debtors"), the chapter 13 debtors in this case, move the court for an order authorizing Debtors to incur new debt. Doc. #37. Debtor Juan Vasquez, III states that Debtors need to purchase a new vehicle because their current vehicle was totaled. Decl. of Juan Vasquez, III, Doc. #37. Mr. Vasquez states that his wife needs a vehicle to drive to and from work. Id. Debtors are looking for a 2018 BMW X2 totaling around \$41,465.60 or another similar vehicle. Id.

Debtors will put down \$8,000.00 as a downpayment for the purchase of a replacement vehicle. Vasquez, III, Decl., Doc. #37. Debtors state that the monthly payment for the replacement vehicle will be \$464.80 for 71 months at 18.30% interest. Id. Debtors will be filing an amended budget indicating they can afford the car payment for the replacement vehicle. Vasquez, III, Decl., Doc. #37.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

The court is inclined to grant this motion. This motion was properly served and noticed, and opposition may be presented at the hearing. The new debt is a single loan incurred to purchase a motor vehicle that is reasonably necessary for the maintenance or support of Debtors. The only security for the new debt will be the motor vehicle to be purchased by Debtors. On November 8, 2023, Debtors filed amended Schedules I and J that demonstrate Debtors' ability to pay future plan payments, projected living expenses, and the new debt. Am. Schedules I & J, Doc. #39.

Accordingly, subject to opposition raised at the hearing, this motion is GRANTED. Debtors are authorized, but not required, to purchase a vehicle in a manner consistent with the motion.

13. [23-11653](#)-A-13 **IN RE: ROBERT ALVAREZ**
[MHM-1](#)

MOTION TO DISMISS CASE
9-20-2023 [\[26\]](#)

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

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

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 #26. Specifically, 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 Trustee with any requested documents; (3) file a complete plan; and (4) file complete schedules. *Id.* Further, the debtor has failed to file tax returns for the years 2020, 2021, and 2022, and that failure is additional grounds for dismissal under 11 U.S.C. § 1307(e). *Id.* Upon the failure of the debtor to file a tax return under 11 U.S.C. § 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate. 11 U.S.C. § 1308(a). *Id.* The debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor failed to appear at the scheduled 341 meeting of creditors, failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4), as well as failed to file a complete plan and schedules. Cause also exists under 11 U.S.C. § 1308(a) to dismiss this case for the failure of the debtor to file his tax returns for the years 2020, 2021, and 2022.

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.

14. [23-12266](#)-A-13 **IN RE: SHENA SIELERT**
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
10-16-2023 [\[12\]](#)

SHENA SIELERT/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 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.

Debtor Shena Janelle Sielert ("Debtor"), the debtor in this chapter 13 case, moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B) and continuing the automatic stay provided under 11 U.S.C. § 362(a) as to all creditors and parties during the pendency of this chapter 13 bankruptcy proceeding. Doc. #12.

Debtor commenced this bankruptcy case on October 11, 2023. Doc. #1. Debtor had a chapter 13 case, see Case No. 23-10198, pending within the preceding one-year period that was dismissed (the "Prior Case"). The Prior Case was filed on February 2, 2023 and dismissed on June 1, 2023 for Debtor's failure to: (1) appear at the 341 meeting, (2) provide the chapter 13 trustee with all required documentation, (3) file all tax returns, and (4) commence making timely plan payments. See Case No. 23-10198, Doc. #27; Order, Doc. #34. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtor filed this case on October 11, 2023. The automatic stay will terminate in the present case on November 10, 2023.

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

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

In this case, the presumption that this bankruptcy case was filed not in good faith arises under 11 U.S.C. § 362(c)(3)(C)(i)(I) because Debtor filed more than one prior case in the preceding year. A review of the court's docket in the Prior Case disclosed a chapter 13 plan was not confirmed, the chapter 13 trustee filed a motion to dismiss on May 3, 2023, and the court dismissed the Prior Case based on Debtor's failure to: (1) appear at the 341 meeting, (2) provide the chapter 13 trustee with all required documentation, (3) file all tax returns, and (4) commence making timely plan payments. See Case No. 23-10198. It also is possible that the presumption that this bankruptcy case was filed not in good faith arises in this case under § 362(c)(3)(C)(i)(III) were the court to find no substantial change in the financial or personal affairs of Debtor.

The presumption that this bankruptcy case was filed not in good faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" Factual contentions are highly probable if

the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted), vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019).

In support of this motion to extend the automatic stay, Debtor declares that she filed the Prior Case pro se and, for unforeseen reasons, did not attend her meeting of creditors or provide all documents requested by the chapter 13 trustee in the Prior Case. Decl. of Shena Janelle Sielert, Doc. #15. Debtor is now represented by counsel and has filed this case to stop the foreclosure sale of her residence. Id. Debtor asserts she paid all the fees due at the time of filing, filed the necessary schedules and chapter 13 plan, and provided her attorney with all documents required by the chapter 13 trustee and is informed and believes her attorney will provide all the documents requested by the chapter 13 trustee. Id. Debtor filed a proposed plan in this case on October 11, 2023. Plan, Doc. #3. Debtor's Schedule J lists a monthly net income of \$1,300.94, and Debtor proposes to apply \$1,300.00 to plan payments in this case. Schedule J, Doc. #11; Plan, Doc. #3.

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

The court is inclined to find that Debtor has overcome by clear and convincing evidence the presumption that this bankruptcy case was filed not in good faith. Debtor filed the Prior Case pro se and failed to confirm a plan because unforeseen circumstances prevented Debtor from attending her meeting of creditors or providing all documents requested by the chapter 13 trustee. In this chapter 13 case, Debtor is represented by counsel and testifies that she has provided all documents required by the chapter 13 trustee to her attorney and is informed and believes her attorney will provide all the documents requested by the chapter 13 trustee. Further, Debtor's personal and financial affairs have changed since the Prior Case was dismissed because Debtor has a higher disposable income from wages, rent for use of a barn as storage, and household contributions from her live in romantic companion. Schedules I & J, Doc. #11. Based on Debtor's Schedules I and J, the court finds there is reason to believe that the current case will result in a discharge or fully performed plan.

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

15. [18-12667](#)-A-13 **IN RE: SAMANTHA JOHNSON**
[MHM-2](#)

MOTION TO DISMISS CASE
9-11-2023 [[72](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN 10/27/23

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on October 27, 2023. Doc. #78.

16. [23-10168](#)-A-13 **IN RE: ROBERT IRVIN**
[MHM-3](#)

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

MICHAEL MEYER/MV

NO RULING.

17. [23-11770](#)-A-13 **IN RE: GABRIELA PORTILLO**
[RSW-2](#)

MOTION TO CONFIRM PLAN
10-3-2023 [[22](#)]

GABRIELA PORTILLO/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 movant has 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.

18. [21-10581](#)-A-13 **IN RE: ANTONIO PERALTA**
[RSW-3](#)

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

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

NO RULING.

19. [23-11683](#)-A-13 **IN RE: MAGDALINO DIMPAS**
[MHM-1](#)

MOTION TO DISMISS CASE
9-20-2023 [\[21\]](#)

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

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

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 #21. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) appear at the scheduled § 341 meeting of creditors; (2) set for hearing a motion to confirm a plan as required by the Order Extending Time to File Missing Documents; and (3) provide Trustee with requested documents. Id. The debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor failed to appear at the scheduled 341 meeting of creditors, failed to set a hearing to confirm her chapter 13 plan and failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4).

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.

20. [23-12083](#)-A-13 **IN RE: JEFFREY ROBINSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-3-2023 [\[12\]](#)

DISMISSED 10/10/23

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 October 10, 2023. Doc. #20. The order to show cause will be dropped as moot. No appearance is necessary.

21. [23-11895](#)-A-13 **IN RE: MARY MACKEY**
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
9-29-2023 [\[20\]](#)

DEUTSCHE BANK NATIONAL TRUST COMPANY/MV
FANNY WAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. While opposition can be raised at the hearing, the court intends to overrule the objection. 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 debtor filed her Chapter 13 plan ("Plan") on September 15, 2023. Doc. #15. Deutsche Bank National Trust Company, as Trustee for Harborview Mortgage Loan Trust 2006-14, Mortgage Loan Pass-Through Certificates, Series 2006-14 ("Creditor") objects to confirmation of the Plan on the grounds that the Plan does not list or provide for treatment of Creditor's secured claim as required by 11 U.S.C. § 1325(a)(5). Doc. #20.

Bankruptcy Code § 1325(a)(5) permits confirmation of a chapter 13 plan so long as provisions are made "with respect to each allowed secured claim provided for by the plan." 11 U.S.C. § 1325(a)(5). However, a chapter 13 plan need not "provide for" a secured claim. See Shook v. CBIC (In re Shook), 278 B.R. 815, 826-27 (B.A.P. 9th Cir. 2002).

Accordingly, the objection will be OVERRULED.

1. [23-11909](#)-A-7 **IN RE: SATNAM SINGH**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-25-2023 [\[14\]](#)

TD BANK, N.A./MV
NEIL SCHWARTZ/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.

As an informative matter, the movant incorrectly completed Sections 7 of the court's mandatory Certificate of Service form. Doc. #21. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service and checked box 6B(2)(a) only and attached a list for that subsection only. However, in Section 7, the declarant checked that service was accomplished by both § 6B(2)(a) and § 6B(2)(b). If service was completed by 6B(2)(a) only as indicated in Section 6 and the supporting attachment, then box 6B(2)(b) should not have been checked in Section 7.

The movant, TD Bank, N.A., Successor in Interest to TD Auto Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2022 Dodge Ram 1500 (the "Vehicle"). Doc. #14.

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-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$3,416.61, including late fees of \$627.57. Decl. of Jessela Amos, Doc. #16.

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 \$47,525.00, and the debtor owes \$70,798.32. Amos Decl., Doc. #16; Decl. of John Eng, Doc. #17.

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

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

2. [22-10733](#)-A-7 **IN RE: TODD/TRISH TRANSMEIER**
[RSB-1](#)

CONTINUED MOTION TO COMPEL ABANDONMENT
9-6-2023 [\[41\]](#)

TRISH TRANSMEIER/MV
R. BELL/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 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). No opposition was raised at the initial hearing held on September 27, 2023. The court continued the hearing on this motion to November 9, 2023, at 9:30 a.m. because the debtors had filed an amended Schedule C on September 26, 2023, and the period to object to that amended Schedule C had not yet expired. Doc. #55. On October 6, 2023, the chapter 7 Trustee filed a statement of non-opposition to the motion. Doc. #60. The failure of creditors, the U.S. Trustee, or any other party in interest to oppose the motion at the original hearing as required by LBR 9014-1(f)(2)(C) 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.

Todd Nicholas Transmeier and Trish Deann Transmeier (together "Debtors"), the chapter 7 debtors in this case, move the court to order the chapter 7 trustee, Jeffrey M. Vetter, to abandon property of the estate known as the single-family residence located at 2502 March Ave., Bakersfield, CA 93313 (the "Property"). Mot., Doc. #41. Debtors assert that they have no non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Id. 11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing In re K.C. Machine & Tool Co., 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." Id. (quoting K.C. Machine & Tool Co., 816 F.2d at 246).

Here, Debtors do not allege that the Property is burdensome to the estate. Motion, Doc. #41. Therefore, Debtors must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtors' Property is valued at \$347,000.00 and is encumbered by a mortgage totaling \$207,435.00. Schedule D, Doc. #1; Decl. of Todd Nicholas Transmeier, Doc. #43. In their original Schedule C, Debtors claimed a \$300,000.00 exemption in the Property pursuant to California Civil Procedure Code § 704.730. Schedule C, Doc. #1; Transmeier Decl., Doc. #43. However, on June 29, 2023, Debtors filed an amended Schedule C in which Debtors did not claim a \$300,000.00 exemption in the Property. Am. Schedule C, Doc. #38.

On September 26, 2023, Debtors again claimed a \$300,000.00 exemption in the Property pursuant to California Civil Procedure Code § 704.730. Am. Schedule C, Doc. #51. Federal Rule of Bankruptcy Procedure ("Rule") 4003(b)(1) allows a party in interest to object to a claim of exemption within 30 days after the conclusion of the § 341 meeting of creditors or 30 days after the filing of an amended Schedule C, whichever is later. In this case, an amended Schedule C was filed on September 26, 2023. Am. Schedule C, Doc. #51. The period of time under Rule 4003 to object to the most recently filed Schedule C has passed, and no objection to the homestead exemption asserted in amended Schedule C has been filed.

Therefore, there is no non-exempt equity in the Property for the benefit of the estate, and the court finds that Debtors have met their burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, this motion is GRANTED.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-9-2023 [\[10\]](#)

TD BANK, N.A./MV
D. GARDNER/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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, TD Bank, N.A., Successor in Interest to TD Auto Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2021 Dodge Ram 3500 (the "Vehicle"). Doc. #10.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least three complete pre-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$3,060.41, which includes late fees of \$98.72. Decl. of Jessela Amos, Doc. #12.

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

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

4. [23-12261](#)-A-7 **IN RE: ELVA RAMOS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-24-2023 [\[12\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.
OSC VACATED 10/25/23

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

DISPOSITION: Dropped.

NO ORDER REQUIRED.

An order vacating the order to show cause in this case was entered on October 25, 2023. Doc. #13.

5. [23-11771](#)-A-7 **IN RE: PARADIGM STEEL FABRICATORS INC.**
[LNH-3](#)

MOTION TO SELL FREE AND CLEAR OF LIENS, AND/OR MOTION TO PAY, MOTION FOR
COMPENSATION FOR GOULD AUCTION & APPRAISAL CO., LLC, AUCTIONEER(S)
10-19-2023 [\[20\]](#)

JEFFREY VETTER/MV
D. GARDNER/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. Though not required, secured creditor Americredit Financial Services, Inc. dba GM Financial ("Creditor") filed a conditional non-opposition to the motion on November 1, 2023, stating that the Creditor only opposes the motion to the extent that the trustee intends to sell the three vehicles that are its collateral for less than the amount of Creditor's secured claims or cannot guarantee that proceeds from the sale of Creditor's collateral will be sufficient to satisfy Creditor's secured claims. Doc. #31. Unless further 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.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Paradigm Steel Fabricators Inc. ("Debtor"), moves the court for an order authorizing the sale of inventory, equipment, and vehicles (the "Property") free and clear of liens at public auction on December 2, 2023 at Debtor's prior business location, 3510 Standard Street, Suite A, Bakersfield, CA 93308, and on

December 16, 2023 at the location of Gould Auction & Appraisal Co, LLC, Jerry Gould, auctioneer and appraiser ("Auctioneer") at 6200 Price Way, Bakersfield, CA 93308, and authorizing the estate to pay Auctioneer commission and expenses. Tr.'s Mot., Doc. #20.

Trustee also seeks authorization for the 60/40 carve out agreement with the IRS ("Agreement"). Tr.'s Mot., Doc. #20; Decl. of Trustee, Doc. #25. Under the Agreement, for the sale proceeds to be paid to the IRS, the IRS will pay 60% of the costs of sale and the estate will pay 40% of the costs of sale. Trustee Decl., Doc. #23. In addition, the IRS will receive 60% of such sale proceeds and the estate will receive 40% of such sale proceeds, until the IRS is paid the amount of its secured claim. Id. Any excess sale proceeds thereafter will be paid to Trustee for the benefit of the estate. Id. Based on the Agreement, the IRS will release its lien against the Property sold with its lien to attach to the sale proceeds, Trustee will retain the right to object to the IRS's claims, and the IRS will retain the right to amend its claims. Id.

Creditor asserts a first-priority purchase money security interest in three vehicles that are the subject of Trustee's motion: (1) a 2020 GMC Sierra, VIN 1GD38PE70LF309856; (2) a 2020 GMC Sierra, VIN 1GD38PE73LF309902; and (3) a 2017 Chevrolet Silverado, VIN 1GB4CYCG6HF119779 (collectively, the "Vehicles"). Doc. #31.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee has not stated that he believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Trustee Decl., Doc. #25. However, the court finds that the sale of the Property is in the best interests of creditors and the estate and the sale of the Property at public auction will yield the highest net recovery to the estate. The proposed sale is made in good faith.

Pursuant to Creditor's conditional non-opposition, Creditor has no opposition to Trustee's motion, except Creditor does not consent for purposes of 11 U.S.C. § 363(f), or otherwise, to any sale free and clear of its lien on the respective Vehicles unless Creditor receives proceeds sufficient to satisfy its liens in full. Doc. #31. However, the motion does not allocate the proposed sale proceeds for the Vehicles. The court will require any sale free and clear of Creditor's liens on the Vehicles to be subject to confirmation by Trustee that Creditor's liens will be paid in full from the sale of the Vehicles before any sale proceeds are allocated between Trustee and the IRS.

Accordingly, so long as Trustee confirms that Creditor's liens will be paid in full from the sale of the respective Vehicles before any sale proceeds are

allocated between Trustee and the IRS, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Property on the terms set forth in the motion. Trustee is authorized to pay Auctioneer for services as set forth in the motion.

1. [23-11623](#)-A-11 **IN RE: MATEO ENTERPRISE, INC. DBA EL MILAGRO MARKET**
[LKW-10](#)

MOTION AUTHORIZING DEBTOR TO MAINTAIN PREPETITION BANK ACCOUNTS IN
CHAPTER 11 CASE
10-26-2023 [[152](#)]

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

Mateo Enterprise, Inc., dba El Milagro Market ("Debtor"), the debtor in this chapter 11 case, moves the court for an order authorizing Debtor to maintain its pre-petition bank accounts (the "Motion"). Doc. #152.

Guideline 3 of the United States Trustee Chapter 11 Operating and Reporting Guidelines for Debtors in Possession (Revised March 31, 2023) for Region 17 ("Guideline 3") and LBR 2015-2(a) require a debtor in possession to close all bank, deposit and investment accounts and open new bank accounts, including separate accounts for tax payments.

Debtor requests waiver of the requirements under Guideline 3 and LBR 2015-2(a) because Debtor has tried to open debtor-in-possession bank accounts at Wells Fargo Bank, JP Morgan Chase Bank, Bank of America, Bank of Sierra, US Bank and Citizens Business Bank without success. Decl. of Salvador Carrera, Doc. #154. Debtor's business generates approximately \$1.7 million in income per year and pays expenses of similar amount. Id. It is critical that Debtor have access to and use of bank accounts in its chapter 11 case. Id. Debtor requests that it be permitted to maintain and use its prepetition bank accounts at Wells Fargo Bank during the administration of its chapter 11 bankruptcy case in lieu of obtaining debtor-in-possession bank accounts to minimize further waste of time and money in the administration of its chapter 11 case as well as to prevent Debtor from being required to close its prepetition bank account and operate without a bank account. Id.

The court takes judicial notice under Federal Rule of Evidence 201 of the fact that a continued hearing to confirm Debtor's subchapter V plan of reorganization is set for December 13, 2023. Doc. #145.

Based on the unsuccessful attempts of Debtor to open debtor-in-possession bank accounts and the fact that Debtor's subchapter V plan is set for a continued confirmation hearing on December 13, 2023, the court finds good cause exists under 11 U.S.C. § 105 to waive the requirements of Guideline 3 and LBR 2015-2(a) to the extent requested in the Motion.

Accordingly, pending opposition at the hearing, the Motion will be GRANTED.

2. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
[CAE-1](#)

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

IGNACIO LAZO/ATTY. FOR DBT.

NO RULING.

11:00 AM

1. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
[22-1004](#)

RESCHEDULED PRE-TRIAL CONFERENCE RE: COMPLAINT
1-11-2022 [[1](#)]

JUAREZ BROTHERS INVESTMENTS, LLC V. GRIMMWAY ENTERPRISES, INC.
IGNACIO LAZO/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
[22-1004](#) [SR-3](#)

RESCHEDULED MOTION TO COMPEL
11-29-2022 [[34](#)]

JUAREZ BROTHERS INVESTMENTS, LLC V. GRIMMWAY ENTERPRISES, INC.
THOMAS WOODS/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

3. [23-11085](#)-A-7 **IN RE: GALINA DEER**
[23-1036](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
9-5-2023 [[1](#)]

FIRST NATIONAL BANK OF OMAHA V. DEER
CORY ROONEY/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 7, 2023, at 11:00 a.m.

ORDER: The court will issue an order.

On November 7, 2023, the plaintiff filed a notice of settlement indicating that this adversary proceeding has been settled and the parties anticipate filing the appropriate settlement documents and/or dismissal of this adversary proceeding within the next two weeks. Doc. #17. Accordingly, this status conference is continued to December 7, 2023, at 11:00 a.m. If this adversary proceeding is not dismissed or otherwise finally resolved by November 30, 2023, the plaintiff shall file and serve a status report by November 30, 2023.

11:30 AM

1. [23-11805](#)-A-7 **IN RE: JONATHAN REESE**

PRO SE REAFFIRMATION AGREEMENT WITH U.S. BANK NATIONAL ASSOCIATION
9-29-2023 [\[20\]](#)

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

DISPOSITION: Continued to November 15, 2023, at 11:00 a.m.

NO ORDER REQUIRED.

The hearing on this reaffirmation agreement was continued to November 15, 2023, at 11:00 a.m. by prior order. Doc. #30.

2. [23-11415](#)-A-7 **IN RE: JAIME GONZALEZ CEJA AND JENNIFER GONZALEZ**

PRO SE REAFFIRMATION AGREEMENT WITH LAKEVIEW LOAN SERVICING, LLC
10-17-2023 [\[16\]](#)

GREGORY SHANFELD/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

This reaffirmation agreement was withdrawn by the creditor on October 18, 2023. Doc. #19.

3. [23-12043](#)-A-7 **IN RE: OCTILIA COTA HERNANDEZ**

REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC. -
2022 CHEVROLET MALIBU
10-11-2023 [\[16\]](#)

DANIEL KING/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship that has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, no evidence has been presented to the court to indicate

how the debtor can afford to make the payment. The debtor claims fewer expenses and more income but has not provided the court with an amended Schedule J. The debtor also claims one of the car payments is being made by her daughter. Therefore, the reaffirmation agreement with Santander Consumer USA Inc. with respect to the 2022 Chevrolet Malibu will be DENIED.

4. [23-12043](#)-A-7 **IN RE: OCTILIA COTA HERNANDEZ**

REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC. -
2018 DODGE DURANGO
10-11-2023 [\[17\]](#)

DANIEL KING/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship that has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, no evidence has been presented to the court to indicate how the debtor can afford to make the payment. The debtor claims fewer expenses and more income but has not provided the court with an amended Schedule J. The debtor also claims one of the car payments is being made by her daughter. Therefore, the reaffirmation agreement with Santander Consumer USA Inc. with respect to the 2018 Dodge Durango will be DENIED.