



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, December 7, 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.

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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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.

9:00 AM

1. [23-12205](#)-A-13 **IN RE: ALBA GONZALEZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
11-15-2023 [\[15\]](#)

JONATHAN VAKNIN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain 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.

Alba Maritza Gonzalez ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on September 29, 2023. Doc. ##1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because: (1) the plan payment is short by \$188.11 per month because there is no provision for Trustee's compensation; (2) Debtor improperly deducts business expenses from Debtor's projected disposable income and therefore is an above-median debtor, not a below-median debtor; and (3) the attorney fee dividend needs to be reduced from \$336.56 per month to \$158.33 per month to comply with LBR 2016-1(c)(4)(B). Doc. #15.

Section 1326(b) requires that Trustee's percentage fee, which is permitted under 28 U.S.C. § 586(e)(1)(B), be paid from a monthly plan payment before other payments are paid to creditors. 11 U.S.C. § 1326(b)(2). The party moving to confirm the chapter 13 plan bears the burden of proof to show facts supporting the proposed plan. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997).

Here, the proposed plan payments are short by \$188.11 per month because the proposed distribution of payments under the Plan do not provide for the payment of Trustee's percentage fee permitted under 28 U.S.C. § 586(e)(1)(B). In addition, the Plan proposes to pay a monthly dividend to Debtor's counsel that exceeds the amount permitted by LBR 2016-1(c)(4)(B). If the attorney dividend is reduced to comply with LBR 2016-1(c)(4)(B), it appears from Debtor's Schedules I and J that Debtor would have sufficient income to make the necessary plan payments to address Trustee's objection. Doc. #1.

Turning to Trustee's objection regarding the improper deduction of business expenses, the court agrees with Trustee and the analysis of Drummond v. Wiegand (In re Wiegand), 386 B.R. 238 (B.A.P. 9th Cir. 2008). While Debtor already proposes a 60-month Plan and the Plan proposes to pay 100% to general unsecured

creditors, the court will still require Debtor to file an amended Form 122C-1 as well as a Form 122C-2 before the court will confirm the Plan.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

2. [22-11711](#)-A-13 **IN RE: CHRISTINA MARTINEZ**
[MHM-1](#)

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

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 December 4, 2023. Doc. #39.

3. [23-11523](#)-A-13 **IN RE: JOSE TIRADO PEREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-16-2023 [[105](#)]

\$78.00 FINAL INSTALLMENT PAID ON 11/17/23

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 now due have been paid. The case will remain pending.

4. [23-11523](#)-A-13 **IN RE: JOSE TIRADO PEREZ**

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST NATIONAL ASSOCIATION
11-6-2023 [[95](#)]

U.S. BANK TRUST NATIONAL ASSOCIATION/MV
KELLI BROWN/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed a modified plan on November 27, 2023 (Doc. #115), although no motion to confirm the modified plan has been filed and noticed for hearing.

As a procedural matter, the objection to confirmation does not comply with Local Rule of Practice ("LBR") 3015-1(c)(4) that requires an objection to confirmation to comply with LBR 9014-1(a)-(e), (f)(2), and (g)(1), including the requirement for a Docket Control Number on all pleadings relating to the objection. 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.

5. [23-11523](#)-A-13 **IN RE: JOSE TIRADO PEREZ**
[MHM-3](#)

MOTION TO DISMISS CASE
10-20-2023 [\[82\]](#)

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 after the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Although the pro se debtor did not file timely written opposition, the debtor did file an Official Form 122C-2, an amended chapter 13 plan and copies of his 2022 state and federal tax returns that address some of the deficiencies that provide the grounds for the motion to dismiss. Doc. ##114-116. 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 all non-responding parties in interest, other than the debtor, are entered. This matter will proceed as scheduled.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the chapter 13 debtor Jose Tirado Perez ("Debtor") that is prejudicial to creditors. Doc. #82. Specifically, Trustee asks the court to dismiss this case for Debtor's failure to: (1) file the correct form for the chapter 13 plan required by the local rules; (2) set a plan for hearing on notice to creditors; (3) file an Official Form 122C-2; (4) comply with the pre-petition credit counseling requirement imposed by 11 U.S.C. § 109(h)(1); and (5) make all plan payments due under the plan. Id. As of October 20, 2023, plan payments are delinquent in the amount of \$350.00, with an additional plan payment of \$350.00 due on November 25, 2023. Id. Further, Debtor has failed to file his tax returns for the 2022 tax year, and that failure is an additional ground for dismissal under 11 U.S.C. § 1307(e). Id. Upon the failure of a 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. Debtor did not file written opposition.

Under 11 U.S.C. § 109(h), an individual may not be a debtor unless the debtor received credit counseling within the 180-day period ending on the petition date. 11 U.S.C. § 109(h)(1). Debtor filed for relief under chapter 13 of the Bankruptcy Code on July 14, 2023. Doc. #1. Debtor completed credit counseling on August 16, 2023, and filed a certificate showing such on August 30, 2023. Doc. #45.

The Bankruptcy Code allows a debtor to request a waiver of the § 109(h)(1) requirement to receive credit counseling pre-petition based on exigent circumstances. 11 U.S.C. § 109(h)(3)(A). As previously determined by the court in connection with a motion filed by Debtor to vacate a prior dismissal of this bankruptcy case, on October 4, 2023, Debtor filed a request to permit Debtor to waive the requirement for pre-petition credit counseling. By the credit counseling certificate filed on August 30, 2023, Debtor received credit counseling within the 45-day post-petition period permitted by the Bankruptcy Code, and the court waived that requirement based on the facts before this court. Court Audio, Doc. #73.

Under 11 U.S.C. § 1308, "[u]pon the failure of the debtor to file a tax return under section 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. § 1307(e). "Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition." 11 U.S.C. § 1308(a).

Here, it does not appear that dismissal is appropriate under 11 U.S.C. § 1308 because, based on the proofs of claim filed by the Internal Revenue Service and the California Franchise Tax Board as well as the tax forms filed by Debtor in response to this motion, it appears that Debtor filed his tax returns for the 2022 tax year prior to filing this chapter 13 bankruptcy case. Doc. #116; Claims 2-2 & 11-2.

However, under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). Here, there is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because Debtor has failed to set a hearing to confirm his chapter 13 plan and Debtor is delinquent in his plan payments. Debtor's chapter 13 bankruptcy case was filed on July 14, 2023, and Debtor has yet to confirm a chapter 13 plan and there is no hearing set or motion filed to confirm Debtor's chapter 13 plan filed on November 27, 2023. Doc. #115.

A review of the debtor's Schedules A/B, C and D shows that Debtor's real property is encumbered and fully exempt, although Trustee has filed an objection to Debtor's amended claim of exemption that is set for hearing on January 4, 2024. Doc. #117-119. In addition to any equity in Debtor's real property, Debtor has significant equity in a Toyota Camry that can be liquidated for the benefit of creditors. Because there appears to be non-exempt equity in 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.

6. [23-11523](#)-A-13 **IN RE: JOSE TIRADO PEREZ**
[MHM-4](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
11-1-2023 [\[90\]](#)

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed a modified plan on November 27, 2023 (Doc. #115), although no motion to confirm the modified plan has been filed and noticed for hearing.

7. [23-11229](#)-A-13 **IN RE: DUNCAN NORWOOD**
[RSW-3](#)

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

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

NO RULING.

8. [23-12130](#)-A-13 **IN RE: PAMELA MULLEN**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
11-1-2023 [\[15\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain 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.

Pamela Jean Mullen ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on September 25, 2023. Doc. #1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because (1) the plan payments do not provide for payment in full of the priority proof of claim filed by the Internal Revenue Service ("IRS"), and (2) the plan provides 0% to general unsecured creditors but Debtor intends to pay \$429.00 per month for a Harley Davidson motorcycle that Trustee contends is not reasonable and necessary for the support of Debtor. Doc. #15.

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). 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).

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. The IRS filed its proof of claim on October 19, 2023. Claim 1-1. The IRS asserts a claim of \$65,680.00, of which \$28,720.00 is secured, \$6,758.52 is unsecured entitled to priority, and \$30,381.48 is an unsecured general claim. Claim 1-1. No party in interest has objected to the IRS's claim. The Plan does not identify any secured claims held by the IRS. Plan, Doc. #3. The Plan estimates that there are no priority unsecured claims. Plan ¶3.12, Doc. #3. Because the Plan does not provide sufficient Plan payments to pay the IRS's priority claim filed in the amount of \$6,758.52 in full, Trustee's objection to confirmation on this ground will be sustained.

With respect to the payment of secured expenses for the Harley Davidson motorcycle, section 1325(b)(1)(B) provides that if a trustee objects to confirmation of a Chapter 13 plan, the court may not confirm the plan unless all of the debtor's "projected disposable income" to be received during the term of the plan will be applied to make payments to unsecured creditors. 11 U.S.C. § 1325(b)(1)(B). Here, because Debtor has an income that is below the median, Debtor "must prove on a case-by-case basis that each claimed expense is reasonably necessary. See [11 U.S.C.] §§ 1325(b)(2) and (3)." Ransom v. FIA Card Servs., N.A., 562 U.S. 61, 71 n.5. Schedule A/B shows that Debtor has two vehicles in addition to the Harley Davidson motorcycle. Schedule A/B, Doc. #1. Schedule J also shows that Debtor's household consists of Debtor and her 21-year-old granddaughter. Schedule J, Doc. #1. Debtor, who has the burden of proof on all elements of plan confirmation, has not established that retention of the Harley Davidson motorcycle is reasonably necessary for Debtor's maintenance or support. Trustee's objection to confirmation on this ground will be sustained.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

9. [23-10445](#)-A-13 **IN RE: ROGELIO/MYRA RIOS**
[RSW-2](#)

MOTION TO MODIFY PLAN
10-17-2023 [\[40\]](#)

MYRA RIOS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 4, 2024 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice 3015-1(d)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #50. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than December 21, 2023. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Trustee shall file and serve a reply, if any, by December 28, 2023.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than December 28, 2023. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

10. [23-12263](#)-A-13 **IN RE: ROBERTA DAVID**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-23-2023 [\[12\]](#)

MICHAEL MEYER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed an amended Schedule C on November 1, 2023, amending the claimed homestead exemption. Doc. #16.

11. [23-12071](#)-A-13 **IN RE: MARYLOU ROMERO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
11-1-2023 [\[15\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain 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.

Marylou Romero ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on September 18, 2023. Doc. #1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because the plan payment is insufficient to pay monthly dividends. The plan payment is \$200.06 short per month, and the Plan is currently taking 100.73 months to fund. Doc. #15. According to Trustee, the Plan payments would need to increase to \$863.08 per month for the Plan to fund in 60 months. Id.

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). 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 proposed Plan provides for monthly plan payments of \$663.00. Plan, Doc. #3. However, the Plan payments would need to increase to \$863.08 per month for the Plan to fund in 60 months. Doc. #15. A review of Debtor's filed Schedules I and J show a net income of only \$678.88 per month. Doc. #1. Accordingly, Debtor has not met her burden of proof to show that Debtor will be able to make the monthly plan payment that is necessary for Debtor's Plan to fund in 60 months.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

MOTION TO MODIFY PLAN
10-26-2023 [\[22\]](#)

STACEY WILSON/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

As an informative matter, the movant did not attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case with the court's mandatory Certificate of Service form (Doc. #27) filed in connection with the motion. Instead of using a copy of the Request for Special Notice List as required when service is made on parties who request special notice by U.S. Mail under Rule 5 and Rules 7005, 9036 Service, the movant attached a list of names and addresses served that was generated through PACER. In the future, the movant should attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case instead of another generated list of names and addresses served. That list can be generated by using the following link on the court's website: <https://www.caeb.uscourts.gov/RequestForSpecialNotice>.

As a further informative matter, the movant incorrectly completed Sections 6 and 7 of the court's mandatory Certificate of Service form. Doc. #27. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service and checked boxes applicable for 6B(2)(a) and attached documents for those subsections only. The declarant also attached a copy of the Clerk's Electronic Service Matrix as attachment 6B1 but failed to check box 6B1. In Section 7, the declarant checked that service was accomplished by Rule 7004 Service under § 6A(1) in addition to § 6B(1)(a), § 6B(2)(a) and § 6B(2)(b). If service was completed by 6B(1) and 6B(2) only as indicated in Section 6 and the supporting attachment, then box 6A(1) should not have been checked in Section 7.

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.

MOTION TO DISMISS CASE
10-18-2023 [\[25\]](#)

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 ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #25. 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 (section 3.14 of the filed plan is blank); (4) file accurate schedules and/or statements; and (5) commence payments due under the plan. In addition, the debtor is ineligible to be a debtor because the debtor failed to complete the Credit Counseling Certificate prior to the bankruptcy filing date as required under 11 U.S.C. § 109(h). Doc. #25. 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 has failed to appear at the scheduled 341 meeting of creditors and has failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Cause also exists to dismiss this case as the debtor has failed to file complete and accurate schedules and has failed to use the correct form for the chapter 13 plan.

Under 11 U.S.C. § 109(h), an individual may not be a debtor unless the debtor received credit counseling within the 180-day period ending on the petition

date. 11 U.S.C. § 109(h)(1). The debtor filed for relief under chapter 13 of the Bankruptcy Code on August 30, 2023. Doc. #1. The Bankruptcy Code allows the debtor to request a waiver of the requirement under § 109(h)(1) to receive credit counseling pre-petition based on exigent circumstances. 11 U.S.C. § 109(h)(3)(A). However, the debtor has not requested a waiver of the § 109(h)(1) requirements and, because the debtor did not receive credit counseling prior to filing her bankruptcy petition and has not received a waiver of that requirement, the debtor may not be a debtor pursuant to § 109(h).

Because the debtor has failed to appear at the meeting of creditors and has not filed a credit counseling certificate, dismissal rather than conversion is appropriate.

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

1. [21-12731](#)-A-7 **IN RE: GURMEET CHERA**
[NES-2](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS NATIONAL BANK AND/OR
MOTION TO AVOID LIEN OF PACCAR FINANCIAL CORP.
11-3-2023 [\[50\]](#)

GURMEET CHERA/MV
NEIL SCHWARTZ/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.

As a procedural matter, the motion does not comply with LBR 9014-1(d)(5), which requires every request for an order to be filed separately from every other request. Under the court's interpretation of LBR 9014-1(d)(5), the request to avoid a judicial lien held by one lienholder is a separate request from the request to avoid the judicial lien of another lienholder, even if both judicial liens are against the same property. Here, the motion filed by the debtor requests avoidance of two separate judicial liens held by two separate lienholders. Doc. #50. Accordingly, the debtor should have filed two separate motions instead of asking for avoidance of two separate judicial liens in a single motion.

As an informative matter, the movant incorrectly completed the last page of the court's mandatory Certificate of Service form. In the signature portion, the declarant entered her signature under the section for a Third Party Service Provider. Doc. #55, 57. However, the declarant is an employee of the law firm filing the motion so the declarant should have entered her signature under the Attorney/Trustee section as this section includes signatures of regularly employed staff members of the office for the attorney or trustee serving the pleadings.

Gurmeet Singh Chera ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. §522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial liens of American Express National Bank ("First Creditor") and Paccar Financial Corp. ("Second Creditor") on the

residential real property commonly referred to as 5101 Shining Crag Avenue, Bakersfield, CA 93313 (the "Property"). Doc. #50; Am. Schedule C, Doc. #48; Schedule E/F, Doc. #1.

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

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C.

§ 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtor's motion did not state the priority of the two judicial liens that Debtor seeks to avoid. Based on the recording dates of the two judicial liens, it appears that First Creditor is the junior lienholder and Second Creditor is the senior lienholder. The court is inclined to grant the motion with respect to First Creditor and Second Creditor under the below multiple lien analysis.

Debtor filed his bankruptcy petition on November 29, 2021. Doc. #1. A judgment was entered against Debtor in the amount of \$11,066.65 in favor of First Creditor on July 30, 2021. Ex. 2, Doc. #54. The abstract judgment was recorded pre-petition in Kern County on August 17, 2021, as docket number 221154767. Ex. 2, Doc. #54. A judgment was entered in the amount of \$81,780.61 in favor of Second Creditor on March 2, 2021. Ex. 3, Doc. #54. The abstract judgment was recorded pre-petition in Kern County on May 26, 2021, as document number 221099781. Ex. 3, Doc. #54. Both liens attached to Debtor's interest in the Property located in Kern County. Doc. #50. Debtor asserts a market value for the Property as of the petition date at \$326,916.00. Am Schedule A/B, Doc. #48; Decl. of Gurmeet Chera, Doc. #53. The Property also is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount \$310,575.72. Chera Decl., Doc. #53; Am. Schedule D, Doc. #48. Debtor claimed an exemption of \$17,000.00 in the Property under California Code of Civil Procedure § 703.140. Am. Schedule C, Doc. #48.

Applying the statutory formula to the lien of First Creditor, the most junior lien, first:

Amount of First Creditor's judicial lien		\$11,066.65
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$392,356.33
Amount of Debtor's claim of exemption in the Property	+	\$17,000.00
		\$420,422.98
Value of Debtor's interest in the Property absent liens	-	\$326,916.00
Amount First Creditor's lien impairs Debtor's exemption		\$93,506.98

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

Continuing in reverse order of priority, applying the statutory formula to the lien of Second Creditor:

Amount of Second Creditor's judicial lien		\$81,780.61
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$310,575.72
Amount of Debtor's claim of exemption in the Property	+	\$17,000.00
		\$409,356.33
Value of Debtor's interest in the Property absent liens	-	\$326,916.00
Amount Second Creditor's lien impairs Debtor's exemption		\$82,440.33

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

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

2. [23-12351](#)-A-7 **IN RE: DELANO/MONICA WILLIAMS**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-2-2023 [\[14\]](#)

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

The movant, American Credit Acceptance ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2014 Buick Enclave, VIN: 5GAKRBKD8EJ365684 (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 debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$1,883.68, which includes late fees of \$60.76. Decl. of Detra Mills, Doc. #18.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Id. The Vehicle is valued at \$14,950.00 and the debtors owe \$22,121.22. Doc. #14; Mills Decl., Doc. #18.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtors' 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 debtors have failed to make at least three pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

3. [23-12473](#)-A-7 **IN RE: GEORGE/PATRICIA ROSALES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-16-2023 [[15](#)]

JOSEPH PEARL/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 11/20/23

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 now due have been paid. The case will remain pending.

4. [23-11481](#)-A-7 **IN RE: DARIN WHITMORE**
[RSW-1](#)

MOTION TO AVOID LIEN OF ALTA ONE FEDERAL CREDIT UNION
10-16-2023 [[16](#)]

DARIN WHITMORE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The motion was resolved by stipulation and order entered on November 29, 2023.
Doc. #25.

11:00 AM

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

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

FIRST NATIONAL BANK OF OMAHA V. DEER
CORY ROONEY/ATTY. FOR PL.
DISMISSED 11/22/23

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on November 22, 2023. Doc. #24.