



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Wednesday, December 7, 2022
Department B - 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 Lastreto 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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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.

Post-Publication Changes: 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 any possible updates.

9:00 AM

1. [22-11712](#)-B-13 **IN RE: PEDRO RODRIGUEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-19-2022 [\[13\]](#)

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

Debtor filed a *Chapter 13 Voluntary Petition* on October 5, 2022. Doc. #1. A fee of \$313.00 is required at the time of filing of the petition. A *Notice of Payment Due* was served on Debtor on October 11, 2022. Doc. #11.

On October 21, 2022, the Clerk of the court issued an *Order to Show Cause re Dismissal of Contested Matter or Imposition of Sanctions* ("OSC") directing Debtor to appear at the hearing and show cause why the case should not be dismissed, sanctions imposed on the debtor, or other relief ordered for failure to comply with the provisions of 28 U.S.C. § 1930(b). Doc. #13.

This matter will proceed as scheduled. If the filing fee of \$313.00 is not paid prior to the hearing, the case may be dismissed, and sanctions imposed on the filer on the grounds stated in the OSC.

2. [22-10218](#)-B-13 **IN RE: CHASE/ANGELA ATKINS**
[RSW-1](#)

MOTION TO MODIFY PLAN
10-3-2022 [\[22\]](#)

ANGELA ATKINS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 4, 2023 at 9:00 a.m.

ORDER: The court will issue an order.

Chase Patrick Atkins and Angela Crystine Atkins (collectively "Debtors") move for an order confirming the *First Modified Chapter 13*

Plan dated October 3, 2022. Doc. #22. The 60-month plan proposes that Debtors shall pay plan payments totaling \$20,000.00 through August 2022, and beginning September 2022, the monthly plan payment is \$2,415.00. Doc. #26. The plan also retains a \$1,488.44 monthly payment directly from Debtors to Class 4 creditor Flagstar Bank and provides for a 100% dividend to allowed, non-priority unsecured claims. Further, beginning September 2022, the plan reduces the attorney fee dividend to \$200.00, the Class 2(A) dividend to Valley Strong Credit Union to \$683.87, and the Class 2(A) dividend to Westmerica Bank to \$1,350.00. *Id.* Debtors' Amended Schedules I and J dated May 2, 2022 indicate that Debtors receive \$4,717.25 in monthly net income, which is sufficient to pay the proposed plan payment plus the direct payment to the Class 4 creditor, totaling \$3,903.44.

In contrast, the operative Chapter 13 Plan dated February 17, 2022, confirmed May 19, 2022, provides that Debtor will make 60 plan payments of \$3,500.00 per month plus the \$1,488.44 direct monthly payment to the Class 4 creditor, totaling \$4,988.44, with a 100% dividend to allowed, non-priority unsecured claims. Docs. #3; #17. The operative confirmed plan also provides that Debtors will pay student loan creditor Department of Education/Nelnet outside of the plan as long-term debts. *Id.*

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to Debtors' motion to modify plan under 11 U.S.C. § 1322(a) because the plan fails to provide for submission of all or such portion of future earnings or other future income to the supervision and control of the Trustee as is necessary to execute the plan. Doc. #28. Trustee notes that the proposed modified plan removes the additional provision regarding direct payment to the student loan creditor, which means that they will be paid as a general unsecured creditor on account of their Claim 6 in the amount of \$7,669.99. *Id.* Thus, the plan as proposed does not fund as is, but Trustee says that this issue could be resolved by increasing the plan payment to \$2,580.00 per month effective November 2022. *Id.*

This motion to modify plan will be CONTINUED to January 4, 2023 at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's opposition to confirmation is withdrawn, the Debtors shall file and serve a written response not later than December 21, 2022. 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, 2022.

If the Debtors elects to withdraw the 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, 2022. If the Debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the objection without a further hearing.

3. [22-11720](#)-B-13 **IN RE: ERIN STEVENSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-10-2022 [\[20\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
\$313.00 FINAL INSTALLMENT PAYMENT ON 11/14/22

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the final installment fee now due has been paid.
Accordingly, the OSC will be VACATED.

4. [22-11720](#)-B-13 **IN RE: ERIN STEVENSON**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-17-2022 [\[12\]](#)

MICHAEL MEYER/MV
MATTHEW DECAMINADA/ATTY. FOR DBT.
WITHDRAWN 11/30/2022

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer ("Trustee") withdrew his objection to debtor Erin David Stevenson's claim of exemptions on November 30, 2022. Doc. #22. Accordingly, this objection will be dropped and taken off calendar pursuant to Trustee's withdrawal.

5. [22-11741](#)-B-13 **IN RE: JOSEPH MARTIN**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-4-2022 [[15](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
WITHDRAWN 11/28/2022

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer ("Trustee") withdrew his objection to debtor Joseph Wayne Martin's claim of exemptions on November 28, 2022. Doc. #22. Accordingly, this objection will be dropped and taken off calendar pursuant to Trustee's withdrawal.

6. [22-11551](#)-B-13 **IN RE: JASMINE SIMPSON**
[MHM-1](#)

MOTION TO DISMISS CASE
11-4-2022 [[34](#)]

MICHAEL MEYER/MV
DANIEL KING/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case for (i) unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)); (ii) failure to set a plan for hearing with notice to creditors; (iii) failure to commence making plan payments (§ 1307(c)(4)); and (iv) the plan is not confirmable. Doc. #34.

Though Debtor did not file opposition, this motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

Here, Trustee filed an *Objection to Debtor's Claim of Exemptions* on September 27, 2022. Doc. #14. That objection was overruled as moot on November 2, 2022. Doc. #32. The DCN for that objection was MHM-1.

Trustee filed this motion to dismiss on November 4, 2022. Doc. #34. The DCN for this motion is also MHM-1, and therefore it does not comply with the local rules. Each new motion requires a different, unused DCN.

For this reason, the motion will be DENIED WITHOUT PREJUDICE.

7. [22-11551](#)-B-13 **IN RE: JASMINE SIMPSON**
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TD BANK, N.A.
9-28-2022 [\[17\]](#)

TD BANK, N.A./MV
DANIEL KING/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

TD Bank, N.A. ("Creditor") objects to confirmation of Jasmine Genyea Simpson's ("Debtor") *Chapter 13 Plan* dated September 6, 2022 pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) because the plan misclassifies Creditor as a Class 1 claim even though its claim matures before completion of the plan and because the plan fails to provide the proper "formula" discount rate in accordance with 11 U.S.C. § 1325(a)(5)(B)(ii) and *Till v. SCS Credit Corp.*, 124 S. Ct. 1951 (2004). Doc. #17.

After Creditor filed this objection, Debtor filed the *First Amended Chapter 13 Plan* dated October 17, 2022, which was withdrawn three days later, and the *Second Amended Chapter 13 Plan* dated October 31, 2022. Docs. #23; #25; #29. Although Debtor has not yet filed, served, and set for hearing a motion to confirm the proposed plan, Creditor's objection to the original plan is now moot. Accordingly, this objection to confirmation will be OVERRULED AS MOOT.

8. [22-10957](#)-B-13 **IN RE: BRYAN URNER AND JULIE VANDERNOOR URNER**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
6-5-2022 [\[1\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

This status conference was set for hearing following the sustaining of an objection to confirmation of the plan, and denial of plan confirmation on September 7, 2022. Docs. #23; #25. Since then, debtors Bryan Edward Urner and Julie Michele Vandernoor Urner have not filed, served, or set for hearing a confirmable, modified plan. This status conference will be called and proceed as scheduled to inquire about the status of plan confirmation, and why Debtors have not taken any action in this case since August 24, 2022.

9. [22-11792](#)-B-13 **IN RE: JOSEPH/SEPTEMBER MIDDLETON**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-7-2022 [\[9\]](#)

MICHAEL MEYER/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Joseph William Middleton's and September Anna Lucille Middleton's (collectively "Debtors") claims of exemption under Cal. Code Civ. Proc. ("CCP") §§ 704.020 & 704.730. Doc. #9.

In the original schedules filed with the petition, Debtors claimed the following exemptions:

- i. An unspecified amount equal to "100% of fair market value, up to any applicable statutory limit" under CCP § 704.730 in real property located at 6401 Hermes Dr., Bakersfield, CA 93306 ("Property") valued at \$450,000.00;
- ii. \$10,000.00 under CCP § 704.020 in furniture and household items located at Property, including beds, dressers, living room furniture, dining room set, family room furnishings, nightstands, tables, chairs, and kitchen appliances valued at \$10,000.00;

iii. \$5,000.00 under CCP § 704.020 in household electronics, cell phones, and televisions valued at \$2,500.00.

Doc. #1.

First, Trustee objects because Debtors did not list a specific dollar amount for the CCP § 704.730 exemption in Property, so it is unclear whether Debtor is claiming the minimum statutory exemption under subsection (a)(2), or a higher exemption under subsection (a)(1) based on the Kern County median sale price for a single-family home in 2021. Doc. #9.

Second, Trustee objects to the \$10,000.00 exemption for household goods and furnishings, and the \$5,000.00 exemption for electronics, both claimed under CCP § 704.020, because Debtors have not proven that the exempted assets are ordinarily and reasonably necessary to Debtors, nor have the assets and their values been itemized. *Id.*

Debtors did not oppose. However, on November 23, 2022, Debtors filed an *Amended Schedules A/B and C*. Doc. #17. The amendment specifies the claimed exemption in Property is \$335,000.00 pursuant to CCP § 704.730(a)(1) based on Kern County's median sale price for a single-family home in 2021. Additionally, the exemptions under CCP § 704.020 are reduced in household goods and furnishings to \$1,800.00, and in electronics to \$1,600.00, and the assets with their values are itemized. *Id.*

Accordingly, Trustee's objection will be OVERRULED AS MOOT because Debtors filed amended schedules. If Debtors' amendment does not fully resolve Trustee's objection, Trustee may file another objection pursuant to Fed. R. Bankr. P. 4003(b)(1).

10:30 AM

1. [22-10947](#)-B-11 **IN RE: FLAVIO MARTINS**
[DJP-3](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC
STAY
11-22-2022 [\[256\]](#)

BANK OF THE SIERRA/MV
HAGOP BEDOYAN/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The Moving Party shall
submit a proposed order with a copy of the
Stipulation attached as an exhibit.

Secured creditor Bank of the Sierra, a California corporation
("Creditor") moves for an order approving a joint stipulation for
relief from the automatic stay ("Stipulation") with debtor-in-
possession Flavio Almeida Martins dba Top Line Dairy ("Debtor")
pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 4001(d).
Doc. #256. Additionally, Creditor seeks waiver of the 14-day stay
provided by Rule 4001(a)(3). *Id.*

Written opposition was not required and may be presented at the
hearing. In the absence of opposition, the court is inclined to GRANT
this motion.

This motion was filed and served pursuant to Local Rule of Practice
("LBR") 9014-1(f)(2) and will proceed as scheduled.¹ 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.

Creditor is a secured creditor of Debtor under three separate loans.
The first is derived from a promissory note in the principal sum of
\$6,325,000.00 ("First Loan"), the second is from a promissory note in
the sum of \$11,700,000.00 ("Second Loan"), and the third is from a
promissory note in the principal sum of \$5,325,000.00 ("Third Loan" or
collectively the "Loans"). *Cf.* Proofs of Claim Nos. 18-21. The parties
acknowledge that each of the Loans were in default on the petition
date. Doc. #259, *Ex. A*.

The Loans are secured by certain deeds of trust recorded in Kings County, which are attached as exhibits to the proposed Stipulation. *Id.*, Exs. A-D to Ex. A.

Debtor is also indebted to Creditor under a fourth promissory note in the principal sum of \$9,727,500.00 for a renewed, revolving line of credit in favor of Creditor ("LOC"). To secure the LOC and the Loans, Debtor executed an *Agricultural Security Agreement* in favor of Creditor granting it a security interest in, among other things, all accounts, farm products, and livestock (including increases and supplies), as well as an assignment of milk proceeds and other rights to payment, and their proceeds, and other property specifically stated in the security agreement. *Id.* As additional security for the LOC, Debtor executed a series of deeds of trust encumbering the collateral for the first three Loans. *Id.*

On April 6, 2022, Creditor filed a complaint in Kings County Superior Court seeking specific performance of the deeds of trust and security agreement, appointment of a receiver, a temporary restraining order and preliminary injunction, judicial foreclosure of real property, claim and delivery, and judicial foreclosure of personal property ("State Court Action"). On April 11, 2022, Creditor sought appointment of a receiver and issuance of a temporary restraining order and preliminary injunction in the State Court Action

Thereafter, on June 1, 2022, Debtor filed this chapter 11 bankruptcy case. Doc. #1. On July 8, 2022, Creditor and Debtor stipulated to permit Creditor to record a *Notice of Default* with respect to the collateral securing the Loans, which the court approved on August 10, 2022. Doc. #136.

Creditor and Debtor executed the Stipulation subject to this motion on November 14, 2022. Doc. #259, Ex. A. A copy of the Stipulation has been properly filed and docketed as a stipulation. Doc. #255. Under the terms of the Stipulation, the parties agree to permit Creditor, or its successors, relief to enforce its rights to its real and personal property as identified in exhibits to the Stipulation, including, but not limited to, proceeding with non-judicial foreclosure of the real property, sale of the personal property, and/or obtaining the appointment of a receiver in the State Court Action. *Id.* Creditor now seeks approval of the Stipulation and waiver of the 14-day stay of Rule 4001(a)(3). Doc. #256.

Under Rule 4001(d)(1)(A)(iii), a party may file a motion for approval of an agreement to modify or terminate the stay provided in § 362. The motion contains the required contents outlined in Rule 4001(d)(1)(B) and was properly served on all creditors as required by Rule 4001(d)(1)(C). Pursuant to Rule 4001(d)(1), (2), and (3), a hearing was set on at least seven days' notice and the parties required to be served (Debtor or other secured creditors) were given at least 14 days to appear and object at the hearing.

This matter will be called as scheduled to inquire whether any party in interest opposes. In the absence of opposition at the hearing, this motion will be GRANTED, and the Stipulation approved. The court will also order the 14-day stay of Rule 4001(a)(3) waived because the parties have consented to stay relief. Any proposed order shall attach the Stipulation as an exhibit.

¹ Since the Stipulation relates to relief from the automatic stay, 21 days' notice was not necessary. Rules 2002(a)(3), 4001(d).

2. [22-11907](#)-B-11 **IN RE: FREON LOGISTICS**
[KJM-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-2-2022 [[177](#)]

M&T CAPITAL AND LEASING
CORPORATION/MV
LEONARD WELSH/ATTY. FOR DBT.
KEVIN MCELENEY/ATTY. FOR MV.
OST 12/3/2022

This matter was added to calendar after posting the original pre-hearing dispositions.

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 with the stipulation attached as an exhibit and shall separately file and docket the same as a stipulation.

Secured creditor M&T Capital and Leading Corporation ("Movant") moves for an order approving a joint stipulation with Freon Logistics ("Debtor") for relief the automatic stay with respect to certain personal property used in Debtor's business (collectively "Equipment") pursuant to 11 U.S.C. § 362(d)(1) and Federal Rule of Bankruptcy Procedure ("Rule") 4001(d). Doc. #177. Additionally, Movant also requests waiver of the 14-day stay of any stay relief order under Rule 4001(a)(3). *Id.*

This matter will be called and proceed as scheduled. Written opposition was not required, and opposition may be presented at the hearing. In the absence of opposition at the hearing, this motion may be GRANTED provided that Movant has complied with the order shortening time ("OST").

This motion was set for hearing on shortened notice with an OST under the procedure specified in Local Rule of Practice ("LBR") 9014-1(f)(3).² Consequently, the creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

On or about February 15, 2018, Movant (as successor by merger) and Debtor entered into *Master Loan and Security Agreement No. 5113* and schedules ("Master Loan Agreement") for the purchase and finance of certain business equipment in which Movant was granted a security interest in the equipment described. See Doc. #181, *Ex. A*. On or about April 23, 2021, Movant (as successor by merger) and Debtor entered into fifteen (15) *Equipment Finance Agreements* and accompanying schedules ("Financing Agreements") for the purchase and finance of certain business equipment. *Id.*, *Ex. B*. The Equipment collectively consists of the 41 individual units secured by Movant under the Master Loan Agreement and Financing Agreements (collectively "Loan Agreements"), which consists of:

- i. Five (5) 2018 Utility VS2RA 53x102 3000R Reefer Trailers;
- ii. Twenty (20) 2022 Peterbilt 579 Sleepers;
- iii. Seven (7) 2018 Great Danes;
- iv. Six (6) 2023 Peterbilt Model 579s; and
- v. Three (3) 2016 Kenworth T680s.

Id.; Docs. ##179-80.

Debtor was in default under the Loan Agreements both before and after the petition date, both by failing to make payments and by failing to maintain insurance on the Equipment. *Id.* As of the petition date, Debtor owed Movant approximately \$4,557,301.86 exclusive of fees, costs, and attorneys' fees under the Loan Agreements. *Id.* Due to Debtor's inability to insure and safeguard the Equipment during the pendency of the bankruptcy case, Debtor consented to allowing Movant to repossess the equipment. See Doc. #181, *Ex. C*. With Debtor's consent, Movant has located the Equipment, which has revealed that the units are scattered across the country, some of the fuel cards for the units are shut off, and some units may be missing or contain malfunctioning GPS trackers. Movant says that it has and is continuing to incur substantial costs and expenses associated with locating, securing, recovering, and storing the Equipment, which will increase Debtor's obligations owed to Movant under the Loan Agreements. Doc. #177. Movant now requests relief from the automatic stay here so

that it can locate, secure, recover, and store the Equipment until resale.

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 intends to find that "cause" exists to lift the automatic stay with respect to the Equipment because the Equipment is uninsured and Debtor has failed to make three pre-petition payments totaling \$343,241.00, and one post-petition payment totaling \$100,649.00. Docs. #179-80. Further, Debtor owes Movant a total of \$4,600,843.98.

Under Rule 4001(d)(1)(A)(iii), a party may file a motion for approval of an agreement to modify or terminate the stay provided in § 362. The motion contains the required contents outlined in Rule 4001(d)(1)(B) and was properly served on all creditors as required by Rule 4001(d)(1)(C). Pursuant to Rule 4001(d)(2), although parties in interest were not given at least 14 days to object, the court shortened the amount of notice required to four days, and parties may appear and be heard at the hearing. Doc. #183. But if any party objects at the hearing, the court will continue the hearing on this motion for further briefing.

This matter will be called and proceed as scheduled. If Debtor appears at the hearing and opposes the relief requested by Movant, the court may order adequate protection, continue the hearing, and set a briefing schedule unless there is no need to develop the record further. If opposition is not presented at the hearing, this motion may be GRANTED.

If granted, the court will order the 14-day stay of Rule 4001(a)(3) waived because the Equipment is uninsured and consists of stranded vehicles at risk of value diminution, so Movant is not adequately protected.

Any order approving the stipulation shall include a copy of the stipulation attached as an exhibit. Since the stipulation has not been docketed separately as a stipulation, Movant shall separately file the stipulation and docket it as a stipulation.

² Since the Stipulation relates to relief from the automatic stay, 21 days' notice was not necessary. Rules 2002(a)(3), 4001(d).

11:00 AM

1. [22-10323](#)-B-7 **IN RE: DONALD/PAULA ROBINSON**
[KSR-1](#)

PRE-TRIAL CONFERENCE RE: OBJECTION TO CONFIRMATION OF PLAN
BY RANDALL GRIGG AND ANGENE GRIGG
4-12-2022 [[15](#)]

ANGENE GRIGG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
KIRK RIMMER/ATTY. FOR MV.
CASE CONVERTED TO CH. 7 8/30/22

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

DISPOSITION: Scheduling Order vacated; objection overruled as moot.

ORDER: The court will issue an order.

On June 15, 2022, the court issued an *Order Setting Contested Matter for Pre-Trial Conference* ("Scheduling Order"), setting forth deadlines for discovery and the submission of pre-trial statements, and set this pre-trial conference for hearing. Doc. #31.

Thereafter, Debtors Donald Robinson and Paula Robinson converted the bankruptcy case to chapter 7 on August 30, 2022. Doc. #36. Creditors Randall Grigg and Angene Grigg have acknowledged that their objection to plan confirmation is moot as a result of the conversion. Doc. #52. Accordingly, the court will VACATE the Scheduling Order (Doc. #31) and OVERRULE AS MOOT the objection to plan confirmation (Doc. #15).

2. [22-11149](#)-B-7 **IN RE: PAULO VILLAREAL-SALINAS**
[22-1024](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
10-10-2022 [[1](#)]

MEDINA V. VILLAREAL-SALINAS, JR
D. GARDNER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

This status conference will be called and proceed as scheduled.

Jennie Medina ("Plaintiff") initiated this adversary proceeding by filing a Complaint against debtor Paolo Villareal-Salinas ("Defendant") on October 10, 2022. Doc. #1. The Clerk of the

Bankruptcy Court issued a summons the next day, October 11, 2022. Doc. #3. That same day, Plaintiff served a copy of the Complaint, summons, and supporting documents on Defendant. Doc. #7. Defendant timely filed an Answer to the Complaint on November 4, 2022. Doc. #8.

Federal Rule of Civil Procedure ("Civ. Rule") 8(b), *as incorporated by* Federal Rule of Bankruptcy Procedure ("Rule") 7008, requires a responsive pleading to: (A) state in short and plain terms the party's defenses to each claim asserted against it; and (B) admit or deny the allegations against it by an opposing party. Here, Defendant's answer begins with an introductory statement and description of the parties, and then responds to some, but not all, allegations in the complaint. Doc. #8. The responses appear to pertain to paragraphs 9-18 of the complaint only, and such responses neither admit nor deny Plaintiff's allegations in those paragraphs. Further, Defendant's answer does not address Plaintiff's allegations in paragraphs 1-8, or paragraphs 19-33. *Id.*; *cf.* Doc. #1.

Under Civ. Rule 12(f), *incorporated by* Rule 7012(b), the court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter on its own motion, or on motion by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading. Defendant's Answer consists of insufficient defenses that are immaterial and impertinent, which are therefore properly subject to a motion to strike.

Additionally, the Answer fails to comply with the Local Rules of Practice ("LBR") because it includes an attached proof of service and exhibits without an index and page numbers.

LBR 9004-2(c)(1) requires all responses, exhibits, proofs of service, and other specified pleadings to be filed as separate documents. With respect to exhibits, LBR 9004-2(d)(1), (d)(2), and (d)(3) require exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, the exhibits were attached to the Answer, were not consecutively numbered, and did not contain an exhibit index. Doc. #8.

LBR 9004-2(e)(1), (e)(2), and LBR 9014-1(e)(3) require the proof of service for any documents to be itself filed as a separate document, and copies of the pleadings and documents served SHALL NOT be attached to the proof of service filed with the court. Here, the Answer included an attached proof of service that was not filed separately. Multiple documents and pleadings, such as the Answer and exhibits, may be included in one proof of service provided that it pertains only to documents related to the same matter.

The court acknowledges that, despite being represented in the bankruptcy, Defendant is without counsel in this adversary proceeding and filed the Answer *pro se*. Though *pro se* litigants are held to less stringent standards than attorneys, they are still required to comply with applicable procedural rules. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197 (2007) ("A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.") (internal quotations and citations omitted); *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986) ("[P]ro se litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of record."). "Thus, before dismissing a *pro se* complaint, the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992), citing *Draper v. Coombs*, 795 F.2d 915, 924 (9th Cir. 1986).

As noted above, this status conference will proceed as scheduled. Since the Answer does not fully comply with Civ. Rule 8(b), the court is inclined to issue an *Order to Show Cause* why Defendant's Answer should not be stricken and providing Defendant a short time to respond with opposition or a conforming pleading.

3. [22-10982](#)-B-7 **IN RE: RENE/ADELA GARCIA**
[22-1020](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
9-19-2022 [\[1\]](#)

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

NO RULING.

This status conference will be called and proceed as scheduled.

Agro Labor Services, Inc. and Cal Central Harvesting, Inc. (collectively "Plaintiffs") initiated this adversary proceeding by filing a Complaint against joint debtor Adela Garcia ("Defendant") on September 19, 2022. Doc. #1. The Clerk of the Bankruptcy Court issued a summons the next day, September 20, 2022. Doc. #3. On September 26, 2022, Plaintiffs served a copy of the summons, Complaint, and related papers on Defendant. Doc. #6.

Defendant did not timely file an Answer. However, Defendant filed an "Affidavit" generally denying Defendant's four claims for relief in the underlying bankruptcy case. See Bankr. Case No. 22-10982, Doc. #21.

Federal Rule of Civil Procedure ("Civ. Rule") 8(b), as incorporated by Federal Rule of Bankruptcy Procedure ("Rule") 7008, requires a responsive pleading to: (A) state in short and plain terms the party's defenses to each claim asserted against it; and (B) admit or deny the allegations against it by an opposing party. Here, Defendant's Affidavit does state in short, plain terms Defendant's denials to Plaintiffs' four claims for relief, but it neither admits nor denies any of the 61 allegations asserted by Plaintiffs in the Complaint.

Under Civ. Rule 12(f), incorporated by Rule 7012(b), the court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter on its own motion, or on motion by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading. Although Defendant's Affidavit has not been filed in this adversary proceeding, Plaintiffs appear to be treating it as an Answer. Defendant's Affidavit therefore contains insufficient defenses, which are therefore properly subject to a motion to strike.

The court acknowledges that, despite being represented in the bankruptcy, Defendant is without counsel in this adversary proceeding and filed the Affidavit *pro se*. Though *pro se* litigants are held to less stringent standards than attorneys, they are still required to comply with applicable procedural rules. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197 (2007) ("A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.") (internal quotations and citations omitted); *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986) ("[P]ro se litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of record."). "Thus, before dismissing a *pro se* complaint, the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992), citing *Draper v. Coombs*, 795 F.2d 915, 924 (9th Cir. 1986).

The court is in receipt of *Plaintiffs' Status Conference Statement* dated November 28, 2022 in which Plaintiffs describe this proceeding, the meeting and conferring with Defendant, and ongoing discovery efforts. Doc. #12. Additionally, Plaintiffs indicate that they have a related adversary proceeding pending before the Honorable Jennifer E. Niemann against Jaime Rene Garcia and Maria Cruz Garcia that was filed on August 19, 2022. Based on these facts, Plaintiffs request a 60-day continuance to the court's January 2023 calendar.

As noted above, this status conference will be called and proceed as scheduled. The court is inclined to issue an *Order to Show Cause* why Defendant's Affidavit in the bankruptcy case should not be stricken for failing to comply with Civ. Rule 8(b) and give Defendant a short time to respond or file and serve a conforming pleading.

11:30 AM

1. [22-11316](#)-B-7 **IN RE: MATTHEW/BARBARA CRUISE**

REAFFIRMATION AGREEMENT WITH SAFE 1 CREDIT UNION - 2010
HYUNDAI ELANTRA
11-7-2022 [[14](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel shall notify the debtors that no appearance is necessary.

A Reaffirmation between debtors Matthew and Barbara Cruise and Safe 1 Credit Union for a 2010 Hyundai Elantra was filed on November 7, 2022. Doc. #14.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtors' attorney with the appropriate attestations. Pursuant to 11 U.S.C. § 524(d), the court need not approve the agreement.

2. [22-11316](#)-B-7 **IN RE: MATTHEW/BARBARA CRUISE**

REAFFIRMATION AGREEMENT WITH SAFE 1 CREDIT UNION - 2014
BUICK LACROSSE
11-7-2022 [[15](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel shall notify the debtors that no appearance is necessary.

A Reaffirmation between debtors Matthew and Barbara Cruise and Safe 1

Credit Union for a 2014 Buick Lacrosse was filed on November 7, 2022. Doc. #15.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtors' attorney with the appropriate attestations. Pursuant to 11 U.S.C. § 524(d), the court need not approve the agreement.

3. [22-11618](#)-B-7 **IN RE: ALTAGRACIA CRUZ**

REAFFIRMATION AGREEMENT WITH PENTAGON FEDERAL CREDIT UNION
11-10-2022 [\[13\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

A Reaffirmation between debtor Altagracia Ochoa Cruz and Pentagon Federal Credit Union for a 2018 Nissan Sentra was filed on November 10, 2022. Doc. #13.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtor's attorney with the appropriate attestations. Pursuant to 11 U.S.C. § 524(d), the court need not approve the agreement.

4. [22-11323](#)-B-7 **IN RE: CODY/BREANNA RICHMOND**

REAFFIRMATION AGREEMENT WITH VERIDIAN CREDIT UNION
11-10-2022 [\[19\]](#)

R. BELL/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel shall notify the debtors that no appearance is necessary.

A Reaffirmation between debtors Cody and Breanna Richmond and Veridian Credit Union for a 2010 Chevrolet Silverado 1500 Crew Cab was filed on November 10, 2022. Doc. #19.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtors' attorney with the appropriate attestations. Pursuant to 11 U.S.C. § 524(d), the court need not approve the agreement.

5. [22-11464](#)-B-7 **IN RE: TERRENCE/FERN SAMMON**

REAFFIRMATION AGREEMENT WITH VALLEY STRONG CREDIT UNION
11-10-2022 [\[15\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel shall notify the debtors that no appearance is necessary.

A Reaffirmation between debtors Terrence and Fern Sammon and Valley Strong Credit Union for a 2014 Buick Lacrosse was filed on November 10, 2022. Doc. #15.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtors' attorney with the appropriate attestations. Pursuant to 11 U.S.C. § 524(d), the court need not approve the agreement.

6. [22-11389](#)-B-7 **IN RE: IBRAHIM SNOBAR AND HELEN SNOBAR AKROUSH**

REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE
11-14-2022 [\[17\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel shall notify the debtors that no appearance is necessary.

A Reaffirmation between debtors Ibrahim Snobar, Helen Snobar Akroush, and Capital One Auto Finance for a 2022 Kia Sorento Utility was filed on November 14, 2022. Doc. #17.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtors' attorney with the appropriate attestations. Pursuant to 11 U.S.C. § 524(d), the court need not approve the agreement.