

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, December 15, 2022
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

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.

9:30 AM

1. [22-11706](#)-A-13 **IN RE: EDDIE CALDWELL AND CHRISTINE MORA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
12-1-2022 [[28](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

NO RULING.

As an informative matter, the certificate of service filed in connection with this objection to confirmation (Doc. #31) used an older version of the court's Official Certificate of Service form (EDC Form 7-005, New 09/2022) instead of the most updated version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

2. [22-11706](#)-A-13 **IN RE: EDDIE CALDWELL AND CHRISTINE MORA**
[NLG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BANKUNITED N.A.
11-22-2022 [[22](#)]

BANKUNITED N.A./MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
NICHOLE GLOWIN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

As a procedural matter, the certificate of service filed in connection with this objection to confirmation (Doc. #25) does not comply with Local Rule of Practice 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form (EDC Form 7-005, Rev. 10/22) as of November 1, 2022.

As an informative matter, counsel for the debtor filed the fillable form of the mandatory certificate of service instead of printing the form prior to filing, so the certificate of service that is on file can be altered. In the future, counsel should print the completed certificate of service before filing the pdf.

3. [22-11706](#)-A-13 **IN RE: EDDIE CALDWELL AND CHRISTINE MORA**
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR SANTANDER CONSUMER USA, INC.
11-18-2022 [\[18\]](#)

SANTANDER CONSUMER USA, INC./MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

NO RULING.

4. [22-11610](#)-A-13 **IN RE: JESSINA HUNTER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-23-2022 [\[35\]](#)

\$160.00 INSTALLMENT PAID 11/30/22

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

5. [22-11610](#)-A-13 **IN RE: JESSINA HUNTER**
[MHM-1](#)

MOTION TO DISMISS CASE
11-17-2022 [\[31\]](#)

MICHAEL MEYER/MV
RESPONSIVE PLEADING

NO RULING.

As an informative matter, the certificate of service filed in connection with this motion to dismiss (Doc. #34) used an older version of the court's Official Certificate of Service form (EDC Form 7-005, New 09/2022) instead of the most updated version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

6. [18-13311](#)-A-13 **IN RE: MELINDA MARTINDALE**
[DMG-4](#)

CONTINUED MOTION TO MODIFY PLAN
10-7-2022 [\[153\]](#)

MELINDA MARTINDALE/MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

The debtor has filed and set for hearing a motion for confirmation of third modified plan (DMG-5) on January 12, 2023. Doc. #168. Therefore, this motion will be DROPPED AS MOOT.

7. [22-11116](#)-A-13 **IN RE: THEDFORD JONES**
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION/APPLICATION FOR
ADEQUATE PROTECTION
11-28-2022 [\[92\]](#)

VALLEY STRONG CREDIT UNION/MV
MICHAEL BERGER/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

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

As a procedural matter, the certificate of service filed in connection with this motion does not comply with LBR 9014-1(c) because the cover page did not include the Docket Control Number for the motion. "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same

number." LBR 9014-1(c)(4). See also LBR 9004-2(b)(6). 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.

The movant, Valley Strong Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2021 Mercedes Benz E Class ("Vehicle"). Doc. #92.

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 failed to make at least three complete post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$4,583.91, including late fees of \$228.39 and termination charge of \$495.00. Decl. of Maria Dabney, Doc. #94. On September 20, 2022, the debtor voluntarily surrendered the Vehicle to Movant. Id.

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

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

8. [22-11623](#)-A-13 **IN RE: AMANDA BEAM**
[MHM-1](#)

MOTION TO DISMISS CASE
11-4-2022 [\[19\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

As an informative matter, the certificate of service filed in connection with this motion to dismiss case (Doc. #22) used an older version of the court's Official Certificate of Service form (EDC Form 7-005, New 09/2022) instead of the most updated version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

9. [18-13226](#)-A-13 **IN RE: CHARLES/SHUANTA BROWN**
[TCS-2](#)

CONTINUED MOTION TO MODIFY PLAN
10-7-2022 [\[56\]](#)

SHUANTA BROWN/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors Charles Earl Brown and Shuanta Renne Brown (collectively, "Debtors") filed and served this motion to confirm the second modified Chapter 13 plan pursuant to Local Rule of Practice 3015-1(d)(2) and set for hearing on November 17, 2022. Doc. ##58-63. The Chapter 13 trustee ("Trustee") filed an opposition to Debtors' motion. Doc. #65. The court continued this matter to December 15, 2022 and ordered Debtors to file and serve a written response to Trustee's objection by December 1, 2022; or if Debtors elected to withdraw this plan, then Debtors had to file, serve, and set for hearing a confirmable modified plan by December 8, 2022. Doc. #68.

Having reviewed the docket in this case, the court finds Debtors have not voluntarily converted this case to Chapter 7 or dismissed this case, and Trustee's objection has not been withdrawn. Further, Debtors have not filed and served any written response to Trustee's objection. Debtors have not filed, served, and set for hearing a confirmable modified plan by the time set by the court.

Accordingly, Debtors' motion to confirm their second modified Chapter 13 plan is DENIED on the grounds set forth in Trustee's opposition.

10. [18-14242](#)-A-13 **IN RE: ELIZABETH FRANCO**
[SL-5](#)

MOTION TO SELL
12-1-2022 [\[98\]](#)

ELIZABETH FRANCO/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for insufficient notice.

Federal Rule of Bankruptcy Procedure 2002(a)(2) requires a motion to sell property of the estate other than in the ordinary course of business to be served on at least 21 days' notice prior to the hearing date. This motion was

served and noticed on December 1, 2022 with a hearing date set for December 15, 2022. Therefore, the notice of the motion does not comply with Federal Rule of Bankruptcy Procedure 2002(a)(2).

11. [22-10758](#)-A-13 **IN RE: NELLA MILAM**
[TCS-3](#)

MOTION TO APPROVE LOAN MODIFICATION
11-16-2022 [\[51\]](#)

NELLA MILAM/MV
TIMOTHY SPRINGER/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.

Nella Milam ("Debtor"), the chapter 13 debtor in this case, moves the court for an order authorizing Debtor to incur new debt. Doc. #51. Debtor is seeking to bring her mortgage on her primary residence located at 28185 Avenue 14½ Madera, CA 93638 ("Residence") current by adding a second deed of trust from Veteran's Affairs to the Residence in the amount of \$16,826.36 that will be due by 2047. Decl. of Nella Millam, Doc. #53. There are no current payments due on the loan, and Debtor will make all of her mortgage payments in class 4 under her modified plan. Doc. #51. Debtor's payment and interest on her primary mortgage will remain the same and continue to be paid outside of her chapter 13 plan. Millam Decl., Doc. #53.

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 motion was served and noticed properly, and no timely written opposition was filed. There is no indication that Debtor is not current on her chapter 13 plan payments or that the chapter 13 plan is in default. Debtor's Schedules I and J demonstrate an ability to pay future plan payments, projected living

expenses, and the new debt. The new debt is a single loan. The only security for the new debt will be Debtor's Residence.

Accordingly, this motion is GRANTED. Debtor is authorized, but not required, to incur new debt from Veteran's Affairs to pay her mortgage current in a manner consistent with the motion.

12. [22-11562](#)-A-13 **IN RE: FRANCISCO LOPEZ JUAREZ AND VICKIE JUAREZ**
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SPECIALIZED LOAN
SERVICING LLC
10-25-2022 [\[17\]](#)

SPECIALIZED LOAN SERVICING LLC/MV
SCOTT LYONS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

NO RULING.

13. [22-11572](#)-A-13 **IN RE: BRANDEE LEONARD**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-7-2022 [\[30\]](#)

SANTANDER CONSUMER USA INC./MV
MARK ZIMMERMAN/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 28 days' notice as required by 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Santander Consumer USA INC. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2021 Kia Forte ("Vehicle"). Doc. #30.

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 six complete pre-petition payments and one post-petition payment. Doc. #30. Movant has produced evidence that the debtor is delinquent by at least \$3,681.86, including late fees of \$105.16 and recovery fees of \$435.00. Declaration of Ashley Young, Doc. #36. Movant recovered the Vehicle pre-petition on August 11, 2022, and the debtor's first modified chapter 13 plan does not provide for the Vehicle. Id.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least six pre-petition payments and one post-petition payment to Movant, Movant recovered the Vehicle pre-petition, the debtor's first modified chapter 13 plan does not provide for the Vehicle, and the Vehicle is a depreciating asset.

14. [22-10777](#)-A-13 **IN RE: STEVENS/CONSTANCE RYAN**
[TCS-3](#)

CONTINUED MOTION TO CONFIRM PLAN
10-12-2022 [\[76\]](#)

CONSTANCE RYAN/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors Stevens Garret Ryan and Constance Elaine Ryan (collectively, "Debtors") filed and served this motion to confirm the second modified Chapter 13 plan pursuant to Local Rule of Practice 3015-1(d)(1) and set for hearing on November 17, 2022. Doc. ##76-82. The Chapter 13 trustee ("Trustee") filed an opposition to Debtors' motion. Doc. #83. The court continued this matter to December 15, 2022 and ordered Debtors to file and serve a written response to Trustee's objection by December 1, 2022; or if Debtors elected to withdraw this plan, then Debtors had to file, serve, and set for hearing a confirmable modified plan by December 8, 2022. Doc. #86.

Having reviewed the docket in this case, the court finds Debtors have not voluntarily converted this case to Chapter 7 or dismissed this case, and Trustee's objection has not been withdrawn. Further, Debtors have not filed and served any written response to Trustee's objection. Debtors have not filed, served, and set for hearing a confirmable modified plan by the time set by the court.

Accordingly, Debtors' motion to confirm their second modified Chapter 13 plan is DENIED on the grounds set forth in Trustee's opposition.

15. [22-11395](#)-A-13 **IN RE: GLORIA GARCIA**
[SLL-1](#)

CONTINUED MOTION TO CONFIRM PLAN
10-10-2022 [\[19\]](#)

GLORIA GARCIA/MV
STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

The debtor has filed and set for hearing a motion for confirmation of a second modified plan (SLL-2) on January 12, 2023. Doc. #33. Therefore, this motion will be DROPPED AS MOOT.

1. [19-11901](#)-A-7 **IN RE: ARMANDO CRUZ**
[19-1095](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT
8-12-2019 [\[1\]](#)

STRATEGIC FUNDING SOURCE, INC. V. CRUZ
JARRETT OSBORNE-REVIS/ATTY. FOR PL.
CONT'D TO 3/16/23 PER AMENDED SCHEDULING ORDER #195

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

DISPOSITION: Continued to March 16, 2023 at 11:00 a.m.

NO ORDER REQUIRED.

On October 12, 2022, the court issued an order continuing the pre-trial conference to March 16, 2023 at 11:00 a.m. Doc. #195.

2. [20-13822](#)-A-7 **IN RE: FAUSTO CAMPOS AND VERONICA NAVARRO**
[21-1006](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
5-6-2021 [\[18\]](#)

RAMIREZ V. CAMPOS
PAMELA THAKUR/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

At the hearing the parties should be prepared to explain to the court why the parties did not file and serve either joint or unilateral status report(s) not later than December 8, 2022 as required by the court's order filed on November 17, 2022. Doc. #49.

3. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[19-1081](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-28-2019 [\[1\]](#)

DILDAY ET AL V. JONES
RILEY WALTER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.