UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, October 13, 2021
Place: Department B – Courtroom #13
Fresno, California

The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click here.

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. 21-11223-B-13 **IN RE: CHRISTOPHER/TRACEY PRESS**
TCS-3

CONTINUED MOTION TO CONFIRM PLAN
7-30-2021 [46]

TRACEY PRESS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

NO RULING.

Christopher David Press and Tracey Lee Press ("Debtors") seek confirmation of their Second Modified Chapter 13 Plan. Doc. #46.

Toyota Motor Credit Corporation ("Creditor") objected to plan confirmation under 11 U.S.C. § 1325(a)(5)(B) because the plan fails to pay the full replacement value of Creditor's collateral, a 2015 Dodge Journey ("Vehicle"). Doc. #57. However, Creditor filed that objection under the wrong Docket Control Number ("DCN"), APN-1, rather than DCN TCS-3.

This matter was previously continued. Doc. #63. At the last hearing, based on representations from Debtors' counsel, Creditor's objection was overruled because the parties had stipulated to value the Vehicle at $13,500.00, which will be paid at a 6.5% interest rate. Docs. ##61-62. Debtors' counsel was directed to file an *ex parte* motion for an order approving stipulation signed by Creditor and Debtors. *Id.*

Debtors submitted an *ex parte* motion on October 6, 2021, but it was rejected because it was not signed by the chapter 13 trustee. As of this writing on October 12, 2021, no new stipulation or motion to approve stipulation has been filed, *ex parte* or otherwise. This matter will be called and proceed as scheduled to inquire about the missing stipulation.

2. 21-12030-B-13 **IN RE: JOSE ARREGUIN**
DJP-1

OBJECTION TO CONFIRMATION OF PLAN BY MID-VALLEY SERVICES, INC. AND SANDRA L. DUNCAN
9-28-2021 [19]

SANDRA DUNCAN/MV
ARASTO FARSAD/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.

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 Moving Party shall submit a proposed order after hearing.

Secured creditors Mid Valley Services, Inc., and Sandra L. Duncan (collectively "Creditors") object to confirmation of Jose R. Arreguin's ("Debtor") chapter 13 plan pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii) and (6) because the plan is not feasible and it fails to provide the proper "formula" discount rate in conformance with *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) for their security interest in real property located at 33207 W. El Progresso Ave., Cantua Creek, California 93608 ("Property"). Doc. #19.

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.

Debtor filed bankruptcy on August 20, 2021. Doc. #1. The first meeting of creditors was scheduled for September 21, 2021. Doc. #13. This meeting was continued to and concluded on October 5, 2021. *See* docket generally. General Order 20-02 extends the deadline to file objections under LBR 3015-1(c)(4) to seven days after the § 341 meeting is concluded and not continued to a further date. *See* Am. Gen. Order 20-02, at 4, ¶ 5 (Am. Apr. 16, 2020).

Under General Order 20-02, the deadline for filing LBR 3015-1(c)(4) objections is October 12, 2021. Creditors' objection was filed on September 28, 2021 and is therefore timely under the original deadline.

Debtor filed his chapter 13 plan with his bankruptcy petition under the procedure specified in LBR 3015-1(c)(1). Doc. #7. Creditors' claim is listed in Class 2(B) in the plan with a value of $156,500.00 and a 5.0% interest rate. *Id.*, § 3.08; *see also* Doc. #1, *Sched. A/B*.

Creditors contend that the plan is not feasible. Schedules I and J indicated that Debtor receives $1,289.00 in monthly net income, but this does not include monthly expenses of $155.00 for property taxes and home insurance, reducing the net income to $1,134.00. After payment of attorney and chapter 13 trustee fees, Creditor insists that the plan is not feasible and cannot be confirmed under § 1325 (a)(6) because Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #19.

Moreover, Creditor indicates that Debtor identified net rental income of $950 per month, but failure to attach a statement showing gross income and ordinary business expenses as required in Schedule I, ¶ 8. Creditors add that this is Debtor's fourth bankruptcy case since 2016, with the most recent having been dismissed on June 16, 2021. Debtor sought extension of the automatic stay under § 362(c)(3)(B) due to this dismissal. *See* AF-1.

Debtor filed amended Schedules I and J on September 30, 2021, after this objection was filed. Doc. #24. Under Amended Schedule I, Debtor's net income from rental property has been reduced from $950 to $450. *Id.*, *Am. Sched. I*, ¶ 8a. Meanwhile, Amended Schedule J reduces monthly net income from $1,289 to $1,284 by removing the $500 rental income expense and adjusting other expenses. *Id.*, *Am. Sched. J*, ¶ 4. The property taxes are listed, but in the combined amount of $85, rather than the $155 cited in the objection. *Id.*, ¶¶ 4a-4b. This is offset slightly by reducing food and housekeeping expenses by $50 and clothing, laundry, and dry cleaning by $30. The changes are as follows:

Schedule J Amendment Changes (Measured In Income)

Item	J	Am. J	Change
4. Rental/home ownership expenses	- $500.00	$0.00	+$500.00
4a. Real estate taxes	$0.00	- $25.00	- $25.00
4b. Property insurance	$0.00	- $60.00	- $60.00
6a. Electricity, heat, natural gas	- $135.00	- $135.00	—
6b. Water, sewer, garbage collection	- $175.00	- $175.00	—
6c. Telephone, cell phone, internet, cable	- $65.00	- $65.00	—
7. Food and housekeeping supplies	- $700.00	- $650.00	+ $50.00
9. Clothing, laundry, and dry cleaning	- $125.00	- $95.00	+ $30.00
10. Personal care products and services	- $125.00	- $125.00	—
11. Medical and dental expenses	- $100.00	- $100.00	—
12. Transportation.	- $125.00	- $125.00	—
15c. Vehicle insurance	- $36.00	- $36.00	—
22c. Monthly expenses	=-$2,086.00	=-$1,591.00	+$495.00
23a. Monthly income	+$3,375.00	+$2,875.00	-$500.00
23c. Monthly net income	= $1,289.00	= $1,284.00	- $5.00

Id. Debtor also included a rental income and expense statement. *Id.* at 7. It shows gross rent of $450.00 and net income of $450.00, but then states that the net income is a loss of $450.00. Total expenses, including rental management fees, mortgages, utilities, insurance, maintenance, and taxes. are all blank. Debtor also

updated Schedule H, the petition, and the Summary of Assets and Liabilities. Docs. ##25-26. Under these changes, Debtor is still able to afford the $1,280.00 plan payment.

Additionally, Creditors argue that the plan does not comply with § 1325(a)(5)(B)(ii) because the plan does not provide for payment of the present value of Creditors' collateral and understates the interest rate necessary to adequately compensate Creditors for the present value of the claim.

In *Till*, the Supreme Court determined that the appropriate interest rate for a secured claim should be determined by the 'formula approach,' which requires the court to take the national prime interest rate and adjust it to compensate for an increased risk of default. *Till*, 541 U.S. at 472. Such factors include (1) circumstances of the estate, (2) the nature of the security, and (3) duration and feasibility of the reorganization plan. *Id.*, at 479.

Creditors note that the prime rate, as of September 28, 2021, was 3.25%.[1] Doc. #19. Debtor's plan meanwhile provides for a 5.0% interest rate. Doc. #7. This rate is insufficient, Creditors argue, because the plan is not feasible and there is a high likelihood that this case will be dismissed. So, they insist the interest rate should be adjusted upward to compensate Creditors for the delay in receiving the amount of the allowed secured claim and bearing the risk of plan failure. No proposed increase to the interest rate is provided.

This matter will be called as scheduled to inquire whether Debtors oppose. Unless opposition is presented at the hearing, the court is inclined to SUSTAIN the objection. Creditor has met its burden on the objection.

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[1] The prime rate is still currently 3.25% as of October 8, 2021. *See also*, https://www.wsj.com/market-data/bonds/moneyrates.

3. 20-13638-B-13 AMS-5 **IN RE: MIGUEL RODRIGUEZ-CISNEROS AND MARIA CEJA**

MOTION TO VALUE COLLATERAL OF FORD MOTOR CREDIT COMPANY
9-21-2021 [135]

MARIA CEJA/MV
ADELE SCHNEIDEREIT/ATTY. FOR DBT.

NO RULING.

Miguel Rodriguez-Cisneros and Maria De Jesus Ceja ("Debtors") seek an order valuing a 2014 Ford F150 ("Vehicle") at $22,131.00. Doc. #118. The Vehicle is encumbered by a security interest in favor of Ford Motor Credit Company ("Creditor") in the amount of approximately $65,000.00.[2] Doc. #1, *Sched. D*; Claim #9.

This matter will proceed as scheduled. The court notes that chapter 13 trustee Michael H. Meyer ("Trustee") seeks dismissal in matter #4 below. MHM-3.

As a procedural matter, the notice of hearing contains contradictory notice language. Doc. #136. In motions filed on less than 28 days' notice, but at least 14 days' notice, LBR 9014-1(f)(2)(C) requires the movant to notify the respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion, and if opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

Here, the notice of hearing states:

> If you object to the Notice of Motion to Value Collateral on you are to file an objection (*sic*) . . . Said objection, if any, *shall be served and filed at least 14 days preceding the hearing date. The failure to file and serve a timely written opposition may result in the motion being resolved without oral argument and the striking of the untimely written opposition*. The confirmation hearing may be continued to such, date, time and place as the Court may order, and without additional notice to you unless so ordered by the court.

Id., at 2, ¶¶ 2-12 (emphasis added). This is incorrect. But then, in the last paragraph, the notice uses the correct notice language:

> Motions filed less than 28 days' notice but at least 14 days' notice LBR 9014-1(f)(2)(C) requires the movant to notify respondents that no party in interest shall be required to file written opposition to the motion (*sic*). Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

Id., at 2, ¶¶ 19-24.

Typically, this ambiguity would result in the motion being denied without prejudice. LBR 1001-1(f) allows the court *sua sponte* to suspend provisions of the LBR not inconsistent with the Federal Rules of Bankruptcy Procedure ("Rule") to accommodate the needs of a particular case or proceeding.

This is the fifth attempt at this motion. *See* Minutes, Docs. #67; #91; #116; #129. Most were denied for procedural issues, including this very same notice language problem. *E.g.*, Doc. #116. The court also raised other concerns such as the failure to provide adequate evidence that the Debtors have satisfied the requirements of §§ 506 and 1325(a)(*). Docs. #91; #129. Because further delay will prejudice the Debtors, who are now facing conversion or dismissal in matter #4 below, this matter will be called as scheduled to inquire

the reason for continuous procedural errors. *Cf.* MHM-3. The court may consider overlooking this ambiguity under LBR 1001-1(f).

11 U.S.C. § 1325(a)(*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) the debt was incurred within 910 days preceding the filing of the petition, and (3) the collateral is a motor vehicle acquired for the personal use of the debtor.

Debtors claim that Vehicle was purchased more than 910 days from the petition date. Doc. #135, at 4, ¶¶ 17-18. Joint debtor Miguel Rodriguez-Cisneros declares that the vehicle was purchased on July 6, 2016, but the other documents filed with this motion suggest that it was acquired a year earlier. Doc. #138. A copy of the loan agreement executed July 6, 2015 was filed concurrently with the motion, which is more than 910 days before the petition date. Doc. #145, Ex. E. There was also a cover page for a "true and correct copy of the purchase contract", but the document appears to have been omitted. Doc. #139, Ex. A. Regardless, the loan agreement is sufficient to show that the elements of § 1325(a)(*) are not met and § 506 is applicable.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

11 U.S.C. § 506(a)(2) states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

In addition to the Carvana offer (Doc. #141, Ex. C) to purchase Vehicle for $22,900 filed in prior attempts, Debtors now cite to an "appraisal" from Kevin Pryor, the General Sales Manager of Paso Robles Ford, in which he estimated the replacement value of the vehicle to be between $26,000 to $28,000 in an email exchange. Doc. #143, Ex. A. Debtors' attorney, Adele Schneidereit, called the Paso Robles Ford Dealership on September 16, 2021 and spoke to Pryor. Doc. #142, Ex. C. Schneidereit asked Pryor to appraise Vehicle without compensation. *Id.*

An email exchange followed, whereby Pryor inquired as to Vehicle's mileage. Doc. #143, Ex. A. Schneidereit responded, "$46,000 + miles," but then noted that "[i]t's been a few months since we got that reading[.]" *Id.* Pryor then provided his opinion that the replacement value of Vehicle is $26,000 to $28,000. *Id.* This was qualified by disclosing that he has not seen the vehicle in person, is assuming that it is in average condition, and incorporated a Carfax report indicating there has been no services completed on the vehicle since April 2017.

Though Pryor's statements are hearsay under Fed. R. Evid. 801-802, Debtors did include two copies of the email conversation between Pryor and Schneidereit. *Id.*; Doc. #144, Ex. D. The Carfax report relied upon by Pryor was not submitted to the court and is also hearsay.

In the absence of contrary evidence, the court assumes that Mr. Pryor is qualified as an expert by knowledge, skill, experience, training, or education under Fed. R. Evid. 702. But, Pryor responded to an email inquiry, has not seen the vehicle, and has not submitted any declarations. His opinion carries virtually no weight even absent contrary evidence

More importantly, Rodriguez-Cisneros' filed a declaration regarding his opinion of replacement value, but it does not actually provide specific dollar amount for replacement value. Instead, Rodriguez-Cisneros "unequivocally . . . believe[s] replacement value is as stated by the General Manager at Ford has a replacement value of $26,000.00 to $28,000 for Ford's collateral, the 2014 F-150 truck (*sic*)." Doc. #138, ¶ 9. So, is the replacement value $26,000 or $28,000? Somewhere in between? What amount, then, should the Trustee pay under the chapter 13 plan?

Debtor's declaration, even if accepted, changes the potential value from Debtor's original position—$22,131.00—to a higher and ambiguous amount. So, now the court has before it a motion with no evidence supporting the requested valuation and no specific alternative valuation. The Debtors have the burden of proof on this issue. *See In re Serda*, 395 B.R. 450, 454 (Bankr. E.D. Cal. 2008); *Enewally v. Wash. Mut. Bank*, 368 F.3d 1165, 1173 (9th Cir. 2004).

This matter will be called and proceed as scheduled.

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[2] Debtors have complied with Federal Rule of Bankruptcy Procedure 7004(b)(3) by serving Marion Harris, Creditor's CEO, at Creditor's main office address on September 21, 2021. Doc. #146.

4. 20-13638-B-13 MHM-3 **IN RE: MIGUEL RODRIGUEZ-CISNEROS AND MARIA CEJA**

MOTION TO DISMISS CASE
9-15-2021 [131]

MICHAEL MEYER/MV
ADELE SCHNEIDEREIT/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this cause for cause pursuant to 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors and failure to confirm a chapter 13 plan. Doc. #131.

Miguel Rodriguez-Cisneros and Maria De Jesus Ceja ("Debtors") timely filed written opposition. Docs. ##148-49. If the court is inclined to grant this motion, Debtors give notice of conversion from chapter 13 to chapter 7 under 11 U.S.C. § 1307(a) and Federal Rule of Bankruptcy Procedure 1017(f)(3).

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

As a procedural matter, the court notes that Debtors' certificate of service was attached to the original response in violation of LBR 9002(c)(1), (e)(1), (e)(2), 9014-1(d)(4), and (e)(3). Doc. #148. Forty-eight minutes later, Debtors cured the defect by filing the two documents separately. Docs. ##149-50.

Debtors filed bankruptcy on November 17, 2020. Doc. #1. Their First Amended Plan was denied for service and noticing defects under Fed. R. Bankr. P. ("Rule") 2002(a), (b), and LBR 3015-1(d)(1). Doc. #48. The Second Amended Plan was withdrawn twice before being confirmed on June 9, 2021. Docs. #60; #72; #99. In Section 3.08 of the confirmed plan, the claim of Ford Motor Credit Company, LLC ("Creditor") is listed in Class 2(B), which requires a 2014 Ford F150 ("Vehicle") to be valued and the secured claim being reduced based on the value of the Vehicle. Doc. #61. Trustee cannot submit the order confirming the plan until an order is entered valuing the Vehicle under LBR 3015-1(e) and (i). Doc. #133.

Debtors have filed five motions to value collateral as of the date of this writing. The first four attempts were denied without prejudice for the following reasons:

1. The first motion to value collateral was filed February 24, 2021. Doc. #52. It was denied without prejudice on April 8, 2021 for procedural reasons because it (a) omitted entirely or reused an old Docket Control Number ("DCN"); (b) combined multiple pleadings into two documents, rather than filing all documents separately; (c) combined exhibits with non-exhibit pleadings and omitted an exhibit index and consecutively numbered pages; and (d) relied solely on an Edmunds Car Valuation. Docs. #67; #71. The court also cautioned Debtors to be mindful of the requirement that any valuation must be "replacement value" and not "fair market value," or any other value.

2. On April 15, 2021, Debtors filed their second motion to value collateral. Doc. #73. Though largely correcting the above procedural defects, it was denied without prejudice on May 28, 2021 because (a) it did not include the Debtors' opinion of the "replacement value" and (b) on the face of the certificate of service, only the motion was served. Doc. ##91-92.

3. The third attempt was filed June 18, 2021. Doc. #102. On July 15, 2021, it was denied without prejudice due to (a) incorrect notice language; (b) attaching a certificate of service to the amended notice; and (c) failure to offer evidence that the

Vehicle was purchased 910 days preceding the petition date. Docs. ##116-17.

4. A fourth motion was filed on July 29, 2021. Doc. #118. Procedural errors were corrected, but the declaration failed to clearly provide the joint debtor's opinion of Vehicle's replacement value and contained seemingly contradictory and confusing statements.[3] Docs. ##116-17. Though it was not opposed, and despite a search to construe the declaration as joint debtor's opinion that the replacement value is $22,131, along with review of the third attempt's declaration, the court was unable to find that Debtors had met their burden of proof with admissible evidence on this issue. Doc. #116.

Since this case had been pending for more than 10 months, Trustee believes the delay is prejudicial to creditors because it cannot file the order confirming the plan and Debtors have not cured the defects to value Vehicle. Doc. #133.

Debtors filed a fifth motion to value collateral on September 21, 2021. It is the subject of matter #4 above. *See* AMS-5. The next day, Debtors timely filed opposition to the motion, stating that they obtained an appraisal for Vehicle from the Paso Robles Ford General Manager of Sales. Doc. #149. But there are issues with the "appraisal" and the motion, which are outlined in matter #4 above.

In sum, Debtors believe that the granting of the motion to value collateral will cure Trustee's issues regarding dismissal. If the court is inclined to grant this motion, Debtors give notice of conversion of this case from chapter 13 to chapter 7 under § 1307(a) and Rule 1017(f)(3). *Id.*, ¶ 9. Debtors claim they are eligible to be Debtors under chapter 7.

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).

The court has reviewed the schedules and there appears to be approximately $88,901.93 in unencumbered, non-exempt equity that could be liquidated for the benefit of the estate. This consists of $86,862.93 equity in real property and $2,039.00 in a vehicle. Conversion, rather than dismissal, could serve the interests of the estate and creditors.

This matter will be called as scheduled and heard in connection the motion to value collateral.

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[3] Joint debtor Miguel Rodriguez-Cisneros' declaration said that he obtained the replacement value from Edmunds.com using their valuation program to factor in the year, make, model, mileage, options, and conditions of the

vehicle. Doc. #122, Ex. C. Rodriguez-Cisneros stated, "[f]actoring in all the above, the Edmunds Valuation is (Edmunds Replacement Value)." *Id.*, ¶ 10. The valuation proposed in the motion, $22,131, was mentioned only once, stating "Vehicle is subject to a single lien from Ford Motor Credit ("Debtors") for $22,131.00." *Id.*, ¶ 5. Adding that Carvana had recently offered $22,900 to purchase Vehicle, which seemed to contradict the motion, Rodriguez-Cisneros concluded, "the Edmunds Valuation, the Carvana appraisal are of appropriate replacement value of the car for redemption purposes ("Motion to Value.")". *Id.*, ¶ 12.

5. 21-11939-B-13 **IN RE: PARGAT DHALIWAL**
PPR-1

OBJECTION TO CONFIRMATION OF PLAN BY CENLAR, FSB
9-21-2021 [27]

CENLAR, FSB/MV
D. GARDNER/ATTY. FOR DBT.
BONNI MANTOVANI/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Cenlar, FSB as servicer for Lakeview Loan Servicing, LLC ("Creditor"), objects to Pargat Singh Dhaliwal's ("Debtor") chapter 13 plan under Local Rule of Practice 3015-1(c)(4) because the plan does not account for the entire amount of the pre-petition arrearages owed to Creditor, does not promptly cure Creditor's pre-petition arrears as required by 11 U.S.C. § 1322(b)(5), and is not feasible pursuant to 11 U.S.C. § 1325(a)(6). Doc. #27.

Debtor withdrew the chapter 13 plan on October 6, 2021. Doc. #31. Accordingly, this objection will be OVERRULED AS MOOT.

6. 21-10541-B-13 **IN RE: CHRISTINE THORNTON**
TCS-1

MOTION TO MODIFY PLAN
9-2-2021 [21]

CHRISTINE THORNTON/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.

Christine Susan Thornton ("Debtor") seeks confirmation of this First Modified Chapter 13 Plan. Doc. #21. Debtor explains the reduction in distribution from 100% to 18% due to previously including stimulus money in monthly payment calculations and the use of a *Lanning* means test to adjust projected disposable income. Docs. ##24-25.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, the chapter 13 trustee, 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

7. 20-12848-B-13 **IN RE: PATRICK/MARIBETH TABAJUNDA**
ALG-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-8-2021 [89]

VALLEY STRONG CREDIT UNION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
ARNOLD GRAFF/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Bankruptcy Rules ("LBR").

First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (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.

An Objection to Confirmation of the Plan was previously filed by Valley Strong Credit Union on October 2, 2020 (Doc. #15) and

sustained on January 6, 2021. Doc. #48. The DCN for that objection was ALG-1. This motion also has a DCN of ALG-1 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

Second, LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition. Here, the notice states opposition "must be filed with the Clerk . . . and served upon Movant and/or its counsel and all relevant parties entitled to receive notice[.]" Doc. #90, at 2, ¶¶ 13-15. The notice should have included the names and addresses where opposition must be addressed, including Movant or its attorney.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

8. 17-14255-B-13 **IN RE: DAVID BAER**
TCS-2

MOTION TO VACATE DISMISSAL OF CASE
9-28-2021 [87]

DAVID BAER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DISMISSED 9/14/21

NO RULING.

David E. Baer ("Debtor") asks the court to vacate the order dismissing this case without prejudice entered September 14, 2021. Doc. #87.

Written opposition was not required and may be presented at the hearing.

This motion was set for hearing on 14 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled.

Debtor filed bankruptcy on November 4, 2017. Doc. #1. The chapter 13 plan was confirmed on April 23, 2018. Doc. #51. Debtor's case was dismissed on September 14, 2021 for failure to make plan payments.

Debtor declares that he has been in bankruptcy for 46 months and tendered $141,596.00 to the chapter 13 trustee for plan payments. Doc. #89.

Debtor claims he fell behind on plan payments due to the COVID-19 pandemic, labor shortage, and drought. *Id.* Debtor is a raisin farmer and gets paid only when the raisins are harvested. Due to the ongoing drought, the harvest time is shortened for a viable crop. However, worker shortages caused the harvest to be delayed, which further delayed plan payments. *Id.*

Debtor is now current on plan payments through October 2021 and has been in bankruptcy for nearly four years. His plan proposes to pay a

100% distribution to unsecured creditors. Debtor's situation has changed because he has enough income from the raisin packers to pay the remaining amounts that will become due in the final year of the plan. Further, Debtor's friend and contractor are going to help him make sure that he sends in the payment in the future. This will be achieved by sending in the payments as they are received so that Debtor will be ahead of plan payments.

Debtor states that he failed to respond to the Notice of Default because he believed it was related to his mortgage modification, which would be resolved upon completion of the modification. He was incorrect because the modification was refused, and he did not make the payment prior to dismissal. Debtor has 14 months remaining on the plan and states his desire to save his house, farm, and be successful in this chapter 13 case.

Federal Rule of Bankruptcy Procedure ("Rule") 9024 incorporates Federal Rule of Civil Procedure ("Civil Rule" 60(b) and permits a party to move for an order vacating dismissal based on: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that could not have been discovered in time to move for a new trial under Civil Rule 59(b); (3) fraud, misrepresentation, or misconduct; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or (6) any other reason that justifies relief.

Debtor argues that the court should vacate dismissal based on (1) mistake, inadvertence, surprise, or excusable neglect, or (6) any other reason justifying relief. Doc. #87. Debtor believed he would be able to modify his mortgage but was unable to do so. He then tried to make his payments current but did not do so quickly enough. Had he done so, the plan would now be current. Further, failure to vacate dismissal will result in Debtor's 46 months of plan payments to be meaningless and he would be forced to refile the case. This motion was made within a reasonable time as required under Civil Rule 60(c).

Meanwhile, Rule 9023 and Civil Rule 59(e) require a motion to alter or amend a judgment to be filed not later than 14 or 28 days, respectively, after entry of the judgment. This motion was filed on September 28, 2021, which was 14 days after the order dismissing the case was entered. Docs. #84; #87. This motion is therefore timely under Rule 9023 and Civil Rule 59(b).

Under Civil Rule 59(e), motions "may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Marlyn Nutraceuticals, Inc. v. Mucos Pharms GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). The rule "does not provide a vehicle for a party to undo its own procedural failures [or] allow a party to introduce new evidence or advance new arguments that could and should have been presented at the [bankruptcy] court prior to the judgment." *DiMarco-Zappa v. Cabanillas*, 238 F.3d 25, 34 (1st Cir. 2001). The rule authorizes reconsideration or amendment of a previous order, but it is "an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enters., Inc.*

v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000). "Indeed, a motion for reconsideration should not be granted absent highly unusual circumstances, unless the [bankruptcy] court is presented with newly discovered evidence, committed clear error, or if there is an intervening change of controlling law." *Id.*

This motion establishes none of those requisites. No change of law or legal error is presented. So, Debtor can only be afforded relief if the court finds the neglect to promptly pay the plan payments "excusable."

Courts are permitted "*where appropriate* to accept late filings caused by inadvertence, mistake, or carelessness, as well as intervening circumstances beyond the party's control." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 388 (1993) (emphasis added).

The issue is whether failure to timely pay or appear at the hearing was "excusable." At bottom, this determination is "an equitable one taking account of all relevant circumstances surrounding the party's omission." *Pioneer*, 507 U.S. at 395. The factors to consider include:

(1) Danger of prejudice to the debtor;
(2) Length of delay and potential impact on judicial proceedings;
(3) Reason for the delay including whether it was in the movant's control; and
(4) Whether the party acted in good faith.

The motion claims that Debtor made a mistake by thinking he would be able to modify his mortgage. After he was unable, he tried to become current on the plan, but did not do so quickly enough.

If the dismissal remains, (1) Debtor will be prejudiced by having to re-file the case despite being 46 months into a 60-month plan. (2) The delay and impact on judicial proceedings will be short because Debtor filed this motion 14 days after the dismissal was entered. (3) The reason for delay was in the Debtor's control in that he relied on a mortgage modification that did not come to fruition, but the initial delinquency due to worker shortages and an accelerated harvest timeline were not in Debtor's control. Lastly, (4) Debtor appears to have acted in good faith.

Debtor's proof suffers some infirmities. First there is insufficient proof of any commitment by the debtor's "friend and contractor" to be sure the remining payments are made. This "friend and contractor" is only going to "help" the Debtor make sure the payments are made. That does not amount to a commitment to make the payments.

Second, there is no explanation why debtor did not seek counsel early upon learning of the Trustee's notice of default. That is completely inconsistent with other statements that he regularly met with counsel.

Third, there is no evidence from counsel on what happened after the Trustee's notice was served August 7, 2021 —two- and one-half months

ago. Doc. #81. The court is hard pressed to make a finding of inadvertence on this record.

This matter will be called as scheduled to inquire whether any parties in interest oppose vacatur. Any order issued by the court will be without prejudice to those parties in interest who acted in good faith relying on the dismissal.

9. 21-10061-B-13 **IN RE: JACINTO/KAREN FRONTERAS**
GEG-2

CONTINUED MOTION TO VALUE COLLATERAL OF USAA FEDERAL SAVINGS BANK
7-8-2021 [70]

KAREN FRONTERAS/MV
GLEN GATES/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Debtors Jacinto Fronteras and Karen Jo Fronteras withdrew this motion on September 20, 2021. Doc. #134. This motion will be dropped from calendar.

10. 21-10061-B-13 **IN RE: JACINTO/KAREN FRONTERAS**
GEG-3

CONTINUED MOTION TO VALUE COLLATERAL OF USAA FEDERAL SAVINGS BANK
7-8-2021 [71]

KAREN FRONTERAS/MV
GLEN GATES/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Debtors Jacinto Fronteras and Karen Jo Fronteras withdrew this motion on September 20, 2021. Doc. #136. This motion will be dropped from calendar.

11. 21-10061-B-13 **IN RE: JACINTO/KAREN FRONTERAS**
RAS-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY USAA FEDERAL SAVINGS BANK
7-20-2021 [85]

USAA FEDERAL SAVINGS BANK/MV
GLEN GATES/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Secured creditor USAA Federal Savings Bank withdrew its objection to confirmation on September 23, 2021. Doc. #139. Moreover, debtors Jacinto Fronteras and Karen Jo Fronteras filed a First Amended Chapter 13 Plan on September 16, 2021, so this objection is moot. Doc. #128. This objection will be dropped from calendar.

12. 21-10061-B-13 **IN RE: JACINTO/KAREN FRONTERAS**
RAS-2

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY USAA FEDERAL SAVINGS BANK
7-20-2021 [88]

USAA FEDERAL SAVINGS BANK/MV
GLEN GATES/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Secured creditor USAA Federal Savings Bank withdrew its objection to confirmation on September 23, 2021. Doc. #138. Moreover, debtors Jacinto Fronteras and Karen Jo Fronteras filed a First Amended Chapter 13 Plan on September 16, 2021, so this objection is moot. Doc. #128. This objection will be dropped from calendar.

13. 21-12289-B-13 **IN RE: DUSTIN/MIRANDA WHEELER**
SL-1

MOTION TO EXTEND AUTOMATIC STAY
9-28-2021 [7]

MIRANDA WHEELER/MV
SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Dustin Wheeler and Miranda Wheeler ("Debtors") seek an order to extend the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #7.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served 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 set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period but was dismissed, then the automatic stay under subsection (a) of this section shall terminate with respect to the debtor on the 30th day after the filing of the latter case. Debtors had one case pending within the preceding one-year period that was dismissed: Case No. 20-13443-A-13. That case was filed on October 30, 2020 and was voluntarily dismissed by *ex parte* motion on January 27, 2021. This case was filed on September 27, 2021, and the automatic stay will expire on October 27, 2021. Doc. #1.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.' Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the

affirmative when weighed against the evidence offered in opposition.'" *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by *Taggart v. Lorenzen*, 139 S. Ct. 1785 (2019)).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith as to all creditors because Debtors have more than one previous case under chapter 13 that was pending within the preceding one-year period. 11 U.S.C. § 362(c)(3)(C)(i)(III).

Joint debtor Miranda Wheeler declares that the previous bankruptcy was voluntarily dismissed because Debtors had to seek COVID-19 forbearance relief for their home mortgage, which required them to catch up on their mortgage payments and cease making plan payments. Further, Debtors' 2017 Dodge Ram 2500 was totaled in a severe accident in January 2021. The combination of financial setbacks made continuation of the bankruptcy untenable, so Debtors voluntarily dismissed the case rather than having the case eventually dismissed. *Id.*

Ms. Wheeler declares that Debtors' circumstances have changed because:

(1) Ms. Wheeler is back to work full-time. Ms. Wheeler had been on disability leave for the six-months prior to the case, causing Debtors to receive only 66.66% of her monthly salary. Now, Debtors are receiving her full salary.

(2) Debtors received $22,482.97 as a net settlement in the truck accident. Additionally, Ms. Wheeler received approximately $24,000 as a settlement for her workers compensation claim. Those funds were used to purchase a 2020 Ford Ranger outright. Debtors were previously paying $587.00 per month for the Dodge Ram and now no longer have any automobile payments.

(3) Debtors are no longer required to pay $350 per month in child support for Ms. Wheeler's daughter because she is now over 18 years old.

Ms. Wheeler is confident that Debtors will be able to maintain their plan payments for an extended period, successfully confirm their chapter 13 plan and make all necessary payments to the chapter 13 trustee. Debtors are willing to accept any restrictions or orders the court places on this case.

Additionally, Debtors filed a chapter 13 plan that provides for 60 monthly payments of $1,200.00 and a 100% dividend to allowed unsecured claims. Doc. #3. Debtors' schedules indicate that Debtors have $1,560.42 in monthly net income. Doc. #1, *Sched. J*.

Based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted. Debtors' petition appears to have been filed in good faith. The court intends to grant the motion and extend the

automatic stay as to all creditors provided that no opposition is presented at the hearing.

The court is inclined to GRANT the motion and extend the automatic stay for all purposes as to all parties who received notice, unless terminated by further order of this court. 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).

14. 21-11699-B-13 **IN RE: MARK ROKKE**
SL-1

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
9-7-2021 [20]

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.

Scott Lyons ("Applicant"), attorney for Mark David Rokke ("Debtor"), requests interim compensation in the sum of $6,485.12 under 11 U.S.C. §§ 330, 331. Doc. #20. This amount consists of $6,024.14 for reasonable compensation for services rendered and $460.98 as reimbursement for actual, necessary expenses incurred from June 23, 2020 through September 2, 2021.

This motion will be DENIED WITHOUT PREJUDICE.

First, the fee summary is incorrect and there are errors in the time records. It states that Applicant's office provided 51.516$\bar{6}$ (51 hours, 31 minutes) of legal services totaling $8,051.66 in fees:

APPLICANT'S WRONG FEE SUMMARY

Professional	Rate	Claimed Hours	Claimed Amount	If hours were correct
Scott Lyons	$400.00	0.50	$200.00	$200.00
Louis Lyons	$350.00	11.70	$3,920.00	$4,095.00
Sylvia Gutierrez	$100.00	39.316$\bar{6}$	$3,931.66	$3,931.67
Hours & Fees[4]		51.516$\bar{6}$	$8,051.66	$8,226.67

Doc. #20, § 7. This contradicts the exhibits claiming 42.366$\bar{6}$ hours (42 hours, 22 minutes) in fees and the request for payment of $6,024.14 in the application. Since Applicant uses minutes instead of decimal hours to log billable hours the court's review of this application is tedious.

From review of the time sheets, Scott Lyons waived the 0.5 hours from the initial consultation on June 23,2020 and performed no further services in this case. Doc. #22, Ex. B. Further, Sylvia

Gutierrez billed $192.50 for 0.55 hours on January 26, 2021 for "Client met with attorney to go over income." It appears that this was supposed to be an entry for Louis Lyons at $350.00 per hour, which would result in the $192.50 in fees requested. The entry also indicates that it was intended to be billed at an attorney rate.

Applicant is urged to submit accurate fee summaries, double check time sheet entries, and consider submitting time sheets in decimal hour format, rather than raw minutes.

Second, the notice of hearing (Doc. #21) and exhibits (Doc. #22) do not comply with the local rules. LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of any persons who must be served with any opposition. Here, the notice lists the parties who must be served opposition, but all addresses are omitted.

LBR 9004-2(d)(2) and (3) require exhibit indices to state the page number at which each exhibit is found within the exhibit document and use consecutively numbered exhibit pages through the exhibit document, including any separator, cover, or divider sheets. Here, the index omits the page number where each exhibit is located, and the document is not consecutively numbered. The local rules require the entire document to be consecutively numbered and the exhibit index to identify each exhibit's placement. Counsel is advised to review the local rulers and ensure procedural compliance in subsequent matters.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

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[4] The total hours and fees are omitted from the fee summary. Assuming the hours and rates listed were correct, which they were not, the hours purportedly billed would result in $8,226.67. Meanwhile, the total fees listed for each person would result in fees of $8,051.66, but this amount is also incorrect.

11:00 AM

1. 17-14112-B-13 **IN RE: ARMANDO NATERA**
20-1035 FW-5

MOTION TO PERMIT SERVICE OF SUPPLEMENTAL COMPLAINT AGAINST DEFENDANTS ROGER L. WARD AND SANDRA S. WARD
9-13-2021 [133]

NATERA V. BARNES ET AL
GABRIEL WADDELL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Armando Natera ("Plaintiff") moves for an order permitting him to serve a supplemental complaint against Roger L. Ward and Sandra S. Ward ("Ward Defendants") setting forth allegations which happened after the date of the first amended complaint under Federal Rule of Civil Procedure 15(d).[5]

The Ward Defendants timely responded. Doc. #162.

This motion was filed on 28 days' notice under LBR 9014-1(f)(1) and will proceed as scheduled.

Plaintiff filed chapter 13 bankruptcy on October 25, 2017. Bankr. Case No. 17-14112 ("Bankr.") Doc. #1. The case was dismissed for failure to pay filing fees on January 3, 2018. Bankr. Doc. #36. It was closed on March 14, 2018. Bankr. Doc. #46.

The Ward Defendants purchased Property on June 14, 2018, which was after the case was dismissed and the automatic stay was lifted.

On June 5, 2020, more than two years after dismissal, Plaintiff reopened the case solely to file this adversary proceeding. Bankr. Doc. #50. The same day, Plaintiff filed an adversary complaint against the Ward Defendants and others for violation of the automatic stay under § 362. Doc. #1. The complaint was dismissed with leave to amend as to Michael Scott Lincicum and Mitzi Lincicum ("Lincicum Defendants") on December 10, 2020. Doc. #87.

Plaintiff filed the First Amended Complaint ("FAC") on December 23, 2020. Doc. #92. The FAC includes allegations involving the Ward Defendants' exercise of ownership over real property located at 2430 E. Orrland Avenue in Pixley, California and a mobile home (collectively "Property") in violation of the automatic stay. Doc. #92. These alleged violations include a lawsuit filed by the

Ward Defendants premised on their claims of ownership and an eventual judgment against the Plaintiff. *Id.*, ¶¶ 20-27; 34-61.

The Ward Defendants' Answer admit that the Property was conveyed but deny that they violated the automatic stay. Doc. #99, ¶¶ 18-21. Meanwhile, in the underlying bankruptcy case, the Ward Defendants filed a motion to retroactively annul the automatic stay. Bankr. Docs. ##76-84. This motion contends that Property was auctioned off to Defendants' predecessor in interest "at the exact same time and date" when Plaintiff filed the bankruptcy petition. Bankr. Doc. #76, at 2, ¶¶ 20-21. "Thus, there was not enough time between the filing of the Petition and the completion of the sale of the [P]roperty for the [predecessors] to be notified of the automatic stay." Doc. #80, at 1, ¶¶ 8-10. The Ward Defendants conclude that they are *bona fide* purchasers of Property and therefore immune from claims of stay violation. *Id.*, ¶¶ 10-12.

On August 18, 2021, the court awarded sanctions jointly and severally against the Ward Defendants and Fidelity National Law Group. Doc. #132. Plaintiff's attorney received a check from the Ward Defendants and their counsel, Fidelity National Law Group, in the amount of $2,793.00 on September 3, 2021, in connection with the sanction award. Doc. #135.

The Ward Defendants served a Notice of Levy pursuant to its judgment on September 9, 2021, which states that the Property to be levied upon is "Monetary sanctions paid to Judgment Debtor by Fidelity National Law Group." *Id.*; Doc. #136, Ex. A, at 1.

Civil Rule 15(d) is applicable in adversary proceedings pursuant to Rule 7015 and provides:

> On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

Civil Rule 15(d) permits a party to supplement its complaint to set out "any transaction, occurrence, or event that happened *after the date of the pleading to be supplemented*." *Burnett v. Dugan*, 2011 U.S. Dist. LEXIS 28702, at *6 (S.D. Cal. Mar. 21, 2011) (emphasis in original). It "provides a mechanism for parties to file additional causes of action based on facts that didn't exist when the original complaint was filed." *Eid v. Alaska Airlines, Inc.*, 621 F.3d 858, 874 (9th Cir. 2010) (denying claims which arose from conduct which happened nearly a year before plaintiffs filed their first complaint), citing *Cabrera v. City of Huntington Park*, 159 F.3d 374 (9th Cir. 1998). This allows the plaintiff to update the complaint and set forth new facts affecting the controversy since the original pleading was filed. *Manning v. Auburn*, 953 F.2d 1355, 1359-60 (11th Cir. 1992); *Griffin v. Cty. Sch. Bd.*, 377 U.S. 218, 226-27 (1964) ("[Civil Rule 15(d) plainly permits supplemental amendments to cover

events happening after the suit, and it follows, of course, that persons participating in these new events may be added if necessary.").

The court has discretion to determine whether to allow the supplemental pleadings and must consider an identical standard as motions for leave to amend pleadings. *Franks v. Ross*, 313 F.3d 184, 198 (4th Cir. 2002). Factors favoring supplemental pleadings include the ability to award complete relief in the action and avoidance of the costs and delays of separate suits. Absent a showing of prejudice to the opposing parties, supplemental pleadings should be liberally allowed. *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir. 1988) ("a supplemental pleading is one designed to bring earlier pleadings up to date."; *Lyon v. U.S. Immigration & Customs Enf't*, 308 F.R.D. 203, 214 (N.D. Cal. 2015).

Plaintiff insists application of the doctrine of "relation back" is appropriate because the supplemental complaint adds a claim that "arises out of the conduct, transactions, and occurrences set out in the first complaint," so there will be minimal risk of prejudice or surprise to the Ward Defendants. Doc. #133, citing *Feldman v. Law Enforcement Assocs. Corp.*, 752 F.3d 339, 346-47 (4th Cir. 2014).

Plaintiff contends that his petition was filed prior to a foreclosure sale, which triggered the automatic stay. Doc. #133. Plaintiff alleges the stay was violated by consummating the foreclosure, recording the trustee's deed on sale, conducting multiple conveyances to multiple owners, and subsequently initiating eviction proceedings. Plaintiff argues that all of these stay violations are void *in ab initio*. *Id.*, citing *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569 (9th Cir. 1992).

The Ward Defendants, Plaintiff argues, know of the existence of the stay and have continued to take action after filing the adversary proceeding, which Plaintiff alleges constitute stay violations. *Id.*

Plaintiff attached a proposed supplemental complaint against the Ward Defendants as an exhibit, which alleges the additional stay violations committed after filing the adversary proceeding. Doc. #156, Ex. B. No new claims are made, but it includes separate and recent alleged violations arising from the original stay violations as claimed in the FAC. This, along with the Ward Defendants' attempt to recoup the sanctions to apply against the judgment, indicate that the Ward Defendants will not be unfairly surprised or prejudiced in permitting Plaintiff to serve the proposed supplemental complaint.

In sum, Plaintiff prays for an order granting this motion pursuant to Civil Rule 15(d) to allow him to serve a supplemental complaint upon the Ward Defendants.

In response, the Ward Defendants oppose Plaintiff's motion, claiming that they did not acquire the Property until June 14, 2018, more than six months after the case was dismissed. Doc. #162. The Wards contend that even if their motion for summary judgment was denied and the original sale was in violation of the automatic stay, they did not acquire the mobile home as part of the land purchase, which

was instead obtained through litigation after the stay was lifted. Since the automatic stay never applied to them, the Ward Defendants argue that the motion to file a supplemental complaint should be denied.

Under § 362(c)(2)(B), the automatic stay continued until January 3, 2018. Since they acquired possession of the Property, including the mobile home, after that date, the Ward Defendants argue that the automatic stay did not apply to any of their subsequent actions.

The Ward Defendants claim that the allegations in the supplemental complaint arising from the initial stay violation are already included in the FAC, so there is no reason why those same allegations should be reaffirmed in the supplemental complaint. The Ward Defendants insist that the claims of multiple conveyances to various owners, including the Wards, occurred after the case was dismissed, so those conveyances were not stay violations because the case had already been dismissed.

Lastly, the Wards argue that their subsequent legal proceedings affecting the mobile home and resulting in the judgment against Plaintiff were warranted because the mobile home was not sold in the foreclosure sale. Because these actions occurred after the case was dismissed and while no automatic stay was in place, the Wards contend no stay violation occurred, and those proceedings are not void.

Allowance of supplemental complaints is "a tool of judicial economy and convenience. Its use is therefore favored." *Keith*, 858 F. 2d at 473. It "promotes economical and speedy disposition of the controversy." *Id.* In deciding this motion, the "focus is on judicial efficiency." *Yates v. Auto City 76*, 299 F.R.D. 611, 613 (N.D. Cal. 2013).

True enough, the proposed supplemental allegations stem from the alleged initial stay violation but the events sought to be added occurred after the filing of the First Amended Complaint. The Supreme Court has long held that new claims, new parties, and events occurring after the original action are all properly permitted under Civ. Rule 15 (d). *Griffin v. County School Board*, 377 U.S. 218, 226-227 (1964). The service of the writ is a new event.

The argument that the writ is based on a judgment concerning the mobile home does not change the result. Some relationship must exist between the newly alleged matters (in the supplemental complaint) and the subject of the original action, they need not arise out of the same transaction. *Keith* at page 474. The relationship to the acts and alleged violation of the automatic stay are the subject of the first amended complaint. If Plaintiff's theories are true, the mobile home litigation could also be affected by the stay. The resolution of the issue will arise either at trial or dispositive motion, here.

Plaintiff has not delayed filing this motion. The Ward defendants do not show or argue any prejudice will result in allowing the service of the supplemental complaint. Though a motion to dismiss with leave

to amend was granted earlier in the case, the first amended complaint has not been subject to any pleading motions. Since allowing supplemental pleadings is favored, it appears the supplemental complaint should be allowed here.

There are very few new allegations stated. The supplemental pleading adds no new parties or claims, and the new allegations can be considered in conjunction with those in the first amended complaint for the reasons outlined by the Ward defendants.
This matter will be called as scheduled. The court is inclined to GRANT the motion. The order shall provide that the defendants shall respond to the new allegations on or before October 29, 2021.

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[5] Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rule" will be to the Federal Rules of Bankruptcy Procedure; "Civil Rule" will be to the Federal Rules of Civil Procedure; and all chapter and section references will be to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

2. 17-14112-B-13 **IN RE: ARMANDO NATERA**
20-1035 FW-7

MOTION TO STRIKE AND/OR MOTION TO DIRECT THE WARD DEFENDANTS TO DISCLOSE THE DECLARANT AS A WITNESS AND ENLARGE THE PRESENT SCHEDULING ORDER
9-15-2021 [144]

NATERA V. BARNES ET AL
GABRIEL WADDELL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The court will issue an order.

Plaintiff Armando Natera ("Plaintiff") asks the court to strike two paragraphs from the declaration of Thomas Trapani, Esq. ("Trapani"). The declaration was filed as part of the Trapani's client's Roger L. Ward and Sandra S. Ward's ("Ward Defendants") motion for summary judgment. The Ward Defendants did not file opposition.

The paragraphs summarize Trapani's opinions after his alleged review of unspecified documents. Specifically, Trapani opines:

1. Neither Plaintiff nor anyone else informed Roger and Sandra Ward or their attorney that Plaintiff had filed for bankruptcy.
2. Plaintiff never alleged he was the owner of the property at issue or that the foreclosure sale was improper for any reason until this adversary proceeding was filed.

Fed. R. Civ. P. ("Civil Rule") 12(f)(applicable here under Fed. R. Bankr. P. 7012) provides that a court can strike from a pleading ". . . any redundant, immaterial, impertinent or scandalous matter."

First, Plaintiff does not claim Trapani's statements are either redundant or scandalous.

Second, Plaintiff cites *Whittlestone, Inc. v. Handi-Craft*, 618 F.3d 970, 973 (9th Cir. 2010) for definitions of "immaterial" and "impertinent." Notably, in *Whittlestone*, the Court of Appeals remanded to the District Court the order striking damage claims from a complaint on the ground they were impermissible as a matter of law. The Ninth Circuit cautioned of the limited role a motion to strike has in dealing with legal deficiencies in pleadings. *Id.*, at 974. *Whittlestone* did not involve evidence.

Trapani's opinions after reviewing the documents are not immaterial because the main issue in this case is the validity of a foreclosure sale and the Ward defendants and other defendants' status as bona fide purchasers. That is an "important and essential relationship" to the defenses and claims involved.

The opinions are also not impertinent because they do pertain to the issues involved in this case. Those include the status of the Ward defendants as purchasers and other issues concerning delay in assertion of rights and the effect of dismissal of the Plaintiff's bankruptcy case.

Civil Rule 12(f) does not provide for the striking from a pleading a statement that may be inadmissible or have little evidentiary weight. Trapani's opinions are likely irrelevant, hearsay, and because they are from Plaintiff's adversary counsel, impermissible conclusions. So, even if admitted, they have very little evidentiary weight.

That said, if Plaintiff determines discovery of the information forming the basis for the opinions are worthy of the expense, that is Plaintiff's choice. A motion under Civil Rule 12(f) is not the vehicle to obtain additional discovery. So, the alternative prayer in the motion is rejected.

The motion is DENIED.

3. 17-14112-B-13 **IN RE: ARMANDO NATERA**
20-1035 TAT-3

MOTION FOR SUMMARY JUDGMENT
9-1-2021 [124]

NATERA V. BARNES ET AL
THOMAS TRAPANI/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to a date determined at hearing.

ORDER: The court will issue an order.

Roger L. Ward and Sandra S. Ward ("Wards" or "Ward Defendants") move for summary judgment quieting title to 2430 E. Orrland Avenue, Pixley, California ("Property") in their favor as of October 25, 2017 at 2:00 p.m. and seek an award of fees and costs against Armando Natera ("Plaintiff"). Doc. #124.

Plaintiff opposes the motion for summary judgment and filed evidentiary objections to the motion. Docs. #148; #149.

Defendants Michael Scott Lincicum and Mitzi Lincicum ("Lincicums"), Richard Barnes ("Barnes"), and Parker Foreclosure Services, LLC ("Parker Foreclosure") join the Wards' in favor of their motion. The Lincicums filed their joinder on September 22, 2021. Doc. #146. Barnes and Parker Foreclosure filed their joinder on October 8, 2021. Doc. #169.

Plaintiff opposes the Lincicum's joinder on the basis that it is not timely and is prejudicial to Plaintiff and filed evidentiary objections to the joinder. Docs. #154; #155. Plaintiff has not yet opposed Barnes' and Parker Foreclosure's joinder, but it was filed later, 6 days before the hearing.

The court intends to grant Plaintiff's motion to permit service of Plaintiff's supplemental complaint upon the Ward Defendants in matter #1 above. FW-5. Defendants will have until October 29, 2021 to respond to the new allegations in the supplemental complaint. Accordingly, this matter will be CONTINUED to a date to be determined at the hearing after October 29, 2021.

4. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
19-1123 WJH-2

MOTION FOR SUMMARY JUDGMENT AND/OR MOTION FOR SUMMARY ADJUDICATION
8-31-2021 [67]

TULARE LOCAL HEALTHCARE DISTRICT V. MEDLINE
MICHAEL WILHELM/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 27, 2021 at 11:00 a.m.

ORDER: The court will issue an order.

The Defendant filed a motion to defer consideration of Plaintiff's motion for summary judgment, which is set for hearing on October 27, 2021. MRH-4. Moreover, the court recently vacated the Second Scheduling Order and issued a Third Scheduling Order, extending the close of fact and expert discovery to November 23, 2021. Doc. #114.

Accordingly, this matter will be continued to October 27, 2021 at 11:00 a.m. to be heard in connection with the motion to defer consideration of Plaintiff's motion for summary judgment. The court may continue this matter further in connection with the extended discovery deadlines at the next hearing.