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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 25-25833-C-7
)
ARTURO VALENZUELA VELEZ and) Motion: DCN TBG-2
NANA TRUC CAO,)
)
Debtors.)
_____)

ORDER DENYING MOTION TO CONVERT CASE TO CHAPTER 13

The Debtors filed a Motion to Convert their chapter 7 case to chapter 13 pursuant to 11 U.S.C. § 706(a).

Although § 706(a) provides that “any waiver of the right to convert is unenforceable,” a motion under § 706(a) nevertheless requires a motion filed and served as required by Rule 9013. Fed. R. Bankr. P. 1017(f)(2).

The requirement of a motion served on the trustee and others designated by the Court serves the purpose of verifying that the movants are eligible for chapter 13 and that the motion is made in “good faith.”

This Court held a hearing on May 4, 2026, on the Debtors’ emergency ex parte motion to convert to chapter 13 in light of a trustee’s sale under a deed of trust scheduled to occur on May 5 before a hearing on regular notice could be held.

A creditor with a pending objection to claim of exemption and an impending post-discharge foreclosure appeared at the “emergency” hearing and opposed the motion as made in bad faith, citing Marrama v. Citizens Bank, 549 U.S. 365 (2007), and Leavitt v. Soto (In re Leavitt), 171 F.3d 1219 (9th Cir. 1994).

The U.S. trustee noted correctly that the automatic stay

1 expired when a discharge was previously entered and that the
2 § 706(a) motion may have been made on the false premise that an
3 automatic stay would arise upon conversion to chapter 13.

4 In view of the opposition, this Court set the matter for
5 hearing on May 13 and fixed a rapid briefing schedule so that the
6 views of the chapter 7 trustee could be known.

7 The chapter 7 trustee has questioned whether the debtors
8 satisfy the "regular income" requirement of 11 U.S.C. § 109(e) in
9 light of Schedules I and J that reflect negative income and notes
10 that it is an "asset case" in which a noticed sale of personal
11 property is impending.

12 No further briefs have been filed.

14 Facts

15 The basic facts are that this case was filed October 22,
16 2025.

17 Schedule A/B item 1.1 listed a residence in Folsom,
18 California, with the notation "Property has an upcoming Trustee
19 Sale date to foreclose."

20 Schedule A/B item 33 listed a potential cause of action:
21 "Potential claim against Todd Sacconi due to predatory lending
22 practices and violation of lending laws."

23 After five sessions of the meeting of creditors, the chapter
24 7 trustee filed a report finding assets.

25 The debtors' chapter 7 discharge was entered February 9,
26 2026.

27 On February 18, 2026, the Debtors commenced a civil action
28 in Sacramento County Superior Court against Todd Sacconi, Tri-

1 Point Capital, and Total Lender solutions alleging nine counts
2 regarding Saccani's efforts to foreclose on the Folsom residence.
3 Case No. 26CV003890, Sacramento County Superior Court, filed
4 2/18/2026.

5 As an aside, this Court notes that it is not clear that the
6 debtors had authority to sue the defendants without permission by
7 the chapter 7 trustee. A prepetition cause action, regardless of
8 whether scheduled or not, is "property of the estate" under the
9 control of the case trustee until such time as it is abandoned
10 under 11 U.S.C. § 554 or sold. The entry of discharge does not
11 operate to abandon a cause of action. Compare 11 U.S.C. §
12 362(c)(1), with § 554. Debtors' counsel may not have understood
13 that point.

14 In any event, on two occasions, the Debtors attempted to
15 obtain injunctive relief against foreclosure. Twice it obtained
16 ex parte TROs that the State Court dissolved upon denying
17 preliminary injunctions in minute orders dated March 18, 2026,
18 and April 16, 2026.

19 With a trustee's sale scheduled for May 5, 2026, the Debtors
20 filed their motion to convert the chapter 7 case to chapter 13 on
21 Friday, May 1, 2026.

22 At the "emergency" hearing on shortened time, this court was
23 not persuaded that it should act before the chapter 7 trustee and
24 the opposing creditor had a fair opportunity to set forth their
25 positions, after which the debtors could reply.

26 The opponent Saccani urged that the case was filed in bad
27 faith, that the debtors' two-time loss in Sacramento County
28 Superior Court in attempts to enjoin the foreclosure indicated

1 the lack of merit in the debtors' opposition to foreclosure, that
2 the timing of the conversion attempt was unduly delay after the
3 second state court loss, and that the debtors had no realistic
4 possibility of confirming a chapter 13 plan.

5 Saccani also noted his pending objection to claim of
6 exemption that is on calendar to be heard May 27, 2026.

7 Saccani argued, forcefully, that the facts were consistent
8 with the Supreme Court decision in Maramma and that the debtors
9 flunk the good faith requirement established in Leavitt.

10 The U.S. trustee noted concerns about the timing, noted that
11 Schedules I and J reflected that the debtors may not have the
12 resources to fund a confirmable chapter 13 plan, noted the
13 chapter 7 trustee had a motion calendared for May 13, 2026, to
14 sell nonexempt assets, and urged this Court to stay its hand
15 until after hearing from the chapter 7 trustee.

16 Counsel for the debtors observed that he could cause the
17 Schedules I and J to be amended to show income to support a
18 chapter 13 plan. It was noted that amendment is not so simple as
19 any amendment must be under penalty of perjury and there would be
20 considerable explaining to do.

21 The chapter 7 trustee weighed in with a filing that did not
22 take a position regarding conversion, but that noted the current
23 Schedules I and J reveal negative net income of \$4,953 and that
24 if not converted, the trustee anticipates a dividend to creditors
25 of at least \$3,688.

26 The first requirement for a § 706(a) conversion to chapter
27 13 is that the converting debtors must be eligible to be debtors
28 under that chapter. The eligibility provision of 11 U.S.C.

1 § 109(e) requires that there must be "regular income" sufficient
2 to enable a plan to be confirmed. Here, the debtors flunk that
3 threshold requirement with their Schedules I and J, executed
4 under penalty of perjury, showing negative monthly income of
5 \$4,953. Admittedly, changed circumstances after the filing of the
6 petition might satisfy the "regular income" requirement, if the
7 court could be persuaded by evidence and testimony under penalty
8 of perjury that there really is now sufficient "regular income."

9 Here, the debtors have made no attempt to demonstrate newly
10 found regular income.

11 It follows that the debtors are not eligible to be chapter
12 13 debtors because they do not satisfy the "regular income"
13 eligibility requirement.

14 After studying the record, this Court also concludes that
15 the procedural history does fit the Marrama pattern to the extent
16 that conversion to chapter 13 in a case with no discernable
17 prospect of confirming a chapter 13 plan is an exercise in
18 futility functioning primarily to delay the inevitable at
19 increased cost.

20 It is also relevant, in this respect, that debtors are
21 skating on the thin ice of "improper purpose" condemned by Rule
22 9011(b)(1) including "cause unnecessary delay, or needlessly
23 increase litigation costs." Fed. R. Bankr. P. 9011(b)(1).

24 The Ninth Circuit decision in Leavitt teaches that all
25 conversions to chapter 13 are subject to a requirement of "good
26 faith." To be precise, it is "cause" to dismiss a chapter 13 case
27 for "bad faith" determined under a "totality of circumstances"
28 test. Leavitt, 191 F.3d at 1223-26.

1 If the "cause" issue arises at the threshold during the
2 pendency of a contested § 706(a) motion to convert to chapter 13,
3 then debtors who wish to convert have the burden of demonstrating
4 that the debtor is not proceeding in "bad faith." Since the
5 obverse of "bad faith" is "good faith," it is usual to state the
6 analysis as requiring debtors to demonstrate "good faith" under
7 "the totality of circumstances" test.


8 The debtors have not persuaded this Court that the totality
9 of the circumstances warrant a conclusion they are proceeding in
10 "good faith."

11
12 ***

13 In view of the litigation chronology suggesting lack of
14 "good faith" after twice failing to persuade a state court with
15 jurisdiction over foreclosures that there is some problem
16 warranting state-court judicial intervention and in view of the
17 apparent futility of qualifying for chapter 13 eligibility under
18 § 109(e) IT IS ORDERED THAT:

19 The Motion to Convert Case to Chapter 13 is DENIED.

20 Dated: May 14, 2026

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25 United States Bankruptcy Judge
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**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

Arturo Valenzuela Velez
103 Southfork Way
Folsom, CA 95630

Nana Truc Cao
103 Southfork Way
Folsom, CA 95630

Stephan M. Brown
The Bankruptcy Group, P.C.
2408 Professional Drive
Roseville, CA 95661

Ethan J. Birnberg
40200 Truckee Airport Road
Suite 1
Truckee, CA 96161

Gabriel P Herrera
1331 Garden Hwy, 2nd Floor
Sacramento, CA 95833

Ved Dashputre
2485 Natomas Park Drive, Suite 550
Sacramento, CA 95833

Office of the U.S. Trustee
Robert T Matsui United States Courthouse
501 I Street, Room 7-500
Sacramento, CA 95814