



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Wednesday, January 11, 2023
Department B – Courtroom #13
Fresno, California**

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

Post-Publication Changes: The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:30 AM

1. [22-12012](#)-B-13 **IN RE: REYNALDO RODRIGUEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-19-2022 [\[23\]](#)

\$32.00 FILING FEE PAID 12/19/22

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the \$32.00 filing fee was paid on December 19, 2022. Accordingly, this order to show cause will be VACATED.

2. [22-11813](#)-B-13 **IN RE: STEVEN/LAURA BALLARD**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
12-20-2022 [\[13\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed on October 24, 2022 ("Plan") by Steven Ballard and Laura Ballard (collectively "Debtors"). Doc. #13.

Though not required, Debtors responded. Doc. #19.

This matter will be called and proceed as scheduled.

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 except Debtors' 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.

Debtors' Plan proposed 36 monthly payments of \$646.00 per month, from which \$5,493.00 will be paid attorney fees and approximately \$16,005.31 will be paid to \$86,281.01 in unsecured, non-priority claims at an 18.55% distribution. Docs. #3; #13. Debtors receive the following monthly income:

From	Description	Amount
Husband	Social Security	\$2,163.00
Husband	Retirement	\$2,010.68
Wife	Business	\$1,060.00
Son	Son's SS	\$1,166.00
Grandma	Money	\$600.00
Total		\$6,999.68

Id.; Sched. I, Doc. #1.

Trustee objects for three reasons: (1) the Plan fails to comply with other applicable provisions of this title [11 U.S.C. § 1325(a)(1)]; (2) the Plan does not provide for all of Debtors' projected disposable income to be applied to unsecured creditors under the plan [§ 1325(b)]; and (3) the Plan provides for payment of fees in excess of the fixed compensation allowed in LBR 2016-1(c).

First, Trustee says that Debtors failed to file complete and accurate documents as required by § 521(a). Doc. #13. Trustee questioned Debtors at the meeting of creditors with respect to the Form 101 Voluntary Petition and Form 122C-1. Doc. #15. The first joint debtor—Steven Ballard—failed to list his middle name, Glenn, in the voluntary petition. *Id.*; cf. Doc. #1. With respect to Form 122C-1, Debtors listed "\$0.00" in Line 4, which requires Debtors to provide average income received by Debtors from members of their household, dependents, parents, and roommates. *Id.* As outlined above from Debtors' Schedule I, they receive monthly income contributions from their son and grandmother. As a result, Trustee objects because Debtors have failed to comply with other applicable provisions as required by § 1325(a)(1).

Second, Trustee objects because Debtors did not include Social Security income contributed by their grandmother or son on Form 122C-1, which results in the failure of the Plan to provide for all of Debtors' projected disposable income to be applied to unsecured creditors under the Plan as required by § 1325(b). Doc. #13.

Lastly, Trustee objects because Debtors' counsel elected to take the flat "no look" fee for compensation under LBR 2016-1(c)(1), but the Plan provides for a pre-petition payment of \$507.00 and \$5,493.00 through the Plan, for a total of \$6,000.00. *Id.* Although Debtors own a business, a small business is not necessarily a "business case" as the term is used in the Chapter 13 Fee Guidelines. *Id.*, citing *In re Dorsett*, 297 B.R. 620, 625 (Bankr. E.D. Cal. 2003). Under *Dorsett*, the

court should review the following factors to determine whether a case is a "business case":

- (1) whether the debtors have any employees, other than themselves, and employment-related issues;
- (2) whether there is established place of business other than the debtors' home;
- (3) whether the debtors' obligations consist primarily of consumer or trade debt;
- (4) whether the debtors have significant amount of inventory or equipment not normally found in a home;
- (5) whether there are any executory contracts or leases that need to be assumed or rejected to protect the debtors' business;
- (6) whether there are business-related debt obligations that may need to be restructured;
- (7) whether there are any cash-collateral issues;
- (8) whether there are any non-consumer related relief from stay issues;
- (9) whether there are any business-related tax issues;
- (10) whether the debtors filed a Business Income and Expenses statement, and if so, the ratio of business expense to total business income;
- (11) whether there are any objections to confirmation of the plan; and
- (12) whether there are any unusual facts that may increase workload or risk of non-payment to the debtors' attorney.

Id.

In response, Debtors claim that Trustee's first two objections are resolved by their amendment filed on December 27, 2022. Doc. #19. In that amendment, the first joint debtor's middle name is included, and Form 122C-1 lists the monthly income contribution from Debtors' son and grandmother. Doc. #17. Therefore, the first two objections are OVERRULED AS MOOT because Debtors have filed corrected documents.

As to the third objection, Debtors' counsel elected to take a \$6,000.00 fee because this is a business case. Doc. #19. Debtors' counsel says that the 2021 taxes provided included a Schedule C for "Profit or Loss From Business." Debtors also claim that *Dorsett* involved the issue of whether attorney fees charged were reasonable, not whether it involved a business. Debtors contend that if Trustee wants to object to reasonableness of fees, Trustee may do so under 11 U.S.C. § 330(a)(4)(B).

LBR 2016-1(a) provides that if there is an objection to compensation, it shall be determined in accordance with 11 U.S.C. §§ 329 and 330, and Fed. R. Bankr. P. 2002, 2016, and 2017.

This matter will be called and proceed as scheduled to inquire about Trustee's response to Debtors' opposition.

3. [22-11934](#)-B-13 **IN RE: JOSE HERNANDEZ**

OBJECTION TO CONFIRMATION OF PLAN BY SUMMIT BANK
12-19-2022 [\[16\]](#)

SUMMIT BANK/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RAYMOND POLICAR/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice. Secured Creditor to file amended objection, if any, within 7 days.

ORDER: The court will issue an order.

Summit Bank dba Equipment Finance Group ("Secured Creditor") objects to confirmation of the *Chapter 13 Plan* filed on November 14, 2022 by debtor Jose Benedicto Hernandez. Doc. #16.

This objection will be OVERRULED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, the objection and supporting documents did not contain a Docket Control Number. Docs. ##16-18. 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 a 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. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Second, the notice of hearing did not comply with LBR 3015-1(c)(4), 9014-1(d)(3)(B)(i), and (f)(2), which require the notice of hearing to advise potential respondents that no written response to the objection is necessary and any opposition to the objection must be presented at the hearing. Doc. #17.

Third, the notice of hearing did not comply with LBR 9014-1(d)(3)(B)(iii), which requires the objecting party to notify respondents that they can determine: (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing

telephonically must view the pre-hearing dispositions prior to the hearing.

For the above reasons, this objection to confirmation will be OVERRULED WITHOUT PREJUDICE. Since LBR 3015-1(c)(4) sets the deadline to file an objection to confirmation of the original plan to seven days after the date first set for the meeting of creditor and this objection was timely, Secured Creditor will be permitted to file an amended objection within seven (7) days of the date of entry of this order.

4. [22-11341](#)-B-13 **IN RE: ALEJANDRO/JULIA ZAMORA**
[JDR-4](#)

MOTION TO CONFIRM PLAN
11-18-2022 [\[55\]](#)

JULIA ZAMORA/MV
JEFFREY ROWE/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.

Alejandro Orozco Zamora and Julia Cerda Zamora (collectively "Debtors") seek an order confirming the *Second Modified Chapter 13 Plan* dated November 18, 2022. Doc. #55.

The plan proposes that Debtors shall make aggregate payments of \$8,405.71 through month 3, and commencing month 4 through month 60, the monthly plan payment shall be \$4,404.55 per month. Doc. #57. The plan also includes a 45.75% dividend to allowed, non-priority unsecured claims. *Id.* Debtors' amended schedules filed October 26, 2022 indicate that they receive \$4,406.00 in monthly net income, which appears to be sufficient to afford the proposed plan payment. Doc. #42. No party in interest timely filed written opposition.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). 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.

5. [22-10957](#)-B-13 **IN RE: BRYAN URNER AND JULIE VANDERNOOR URNER**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 13 VOLUNTARY PETITION
6-5-2022 [\[1\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Concluded.

ORDER: The court will issue an order.

The court intends to grant the debtors' motion to confirm plan in matter #6 below. Accordingly, this status conference will be ordered CONCLUDED.

6. [22-10957](#)-B-13 **IN RE: BRYAN URNER AND JULIE VANDERNOOR URNER**
[RSW-1](#)

MOTION TO CONFIRM PLAN
12-6-2022 [\[30\]](#)

JULIE VANDERNOOR URNER/MV
ROBERT WILLIAMS/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.

Bryan Edward Urner and Julie Michele Vandernoor Urner (collectively "Debtors") seek confirmation of the *First Modified Chapter 13 Plan* dated December 6, 2022. Doc. #30. The plan proposes that Debtors shall make 60 monthly payments of \$6,300.00 per month with a 100% dividend to allowed, non-priority unsecured claims. Doc. #32. Debtors' amended

schedules indicate that they receive \$6,465.00 per month, which appears to be sufficient to afford the proposed plan payment. Doc. #28. No party in interest timely filed written opposition.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). 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. [22-11559](#)-B-13 **IN RE: MISAEL DELGADO AND VERONICA ZAMUDIO**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-2-2022 [\[59\]](#)

MICHAEL MEYER/MV
ARASTO FARASAD/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled provided Debtors acquired Property more than 1,215 days' preceding the petition date.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Misael Cordero Delgado's and Veronica Rivas Zamudio's (collectively "Debtors") claim of exemption in real property located at 2465 South Orange Ave., Fresno, CA ("Property") in the amount of \$210,350.00 pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. Doc. #59.

Debtors timely responded. Doc. #63.

This objection was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtors 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 sustaining of the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtors are entered. 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).

Since Debtors testified at the 341 meeting of creditors on November 29, 2022, that they were uncertain of the date that they purchased the Property, Trustee requests a copy of the escrow closing statement and recorded grant deed to verify the date that it was purchased. Doc. #61. Until receiving such documents, Trustee contends that Debtors cannot exempt any amount of interest in Property acquired in the 1,215-day period preceding the petition date exceeding \$189,050.00. Doc. #59, citing 11 U.S.C. § 522(p)(1).

Debtors respond that they purchased 2459-2475 S. Orange Ave., including Property, as mixed-use property on May 2, 2019. Docs. #63; #65. Property was old and needed significant refurbishing and upgrading, which was completed during COVID, and Debtors moved into Property sometime around February 1, 2022. *Id.* As an exhibit, Debtors include an unrecorded note secured by deed of trust dated May 2, 2019, and a mortgage statement indicating that funds were advanced for the purchase of Property on May 4, 2019. Doc. #64. Joint debtor Misael Cordero Delgado declares that the deed of trust was recorded on May 2, 2019, which was 1,225 days before the September 8, 2022 petition date. Doc. #64.

Additionally, the response indicates that Debtors will acquire and provide a recorded copy of the deed of trust shortly. Searching Property's APN on the Fresno County Recorder's reveals multiple deeds of trust involving the Debtors.¹ One such deed of trust involving the Debtors as grantees was recorded on May 9, 2019 as Document No. 2019-0048025. If this is the correct deed of trust in which Debtors acquired Property, then it would appear that Debtors acquired Property 1,218 days preceding the petition date.

This matter will be called and proceed as scheduled to inquire about Trustee's response. If Debtors acquired the Property on May 9, 2019, or another date more than 1,215 days preceding the petition date, this objection will be OVERRULED.

¹ See *Official Record Search and Copies*, Fresno County Recorder, <https://fresnocountyca-web.tylerhost.net/web/> (visited Jan. 8, 2023). The court may take judicial notice *sua sponte* of information published on government websites. Fed. R. Evid. 201(c)(1); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

8. [22-10760](#)-B-13 **IN RE: MATTHEW CRIPPEN**
[MHM-2](#)

MOTION TO DISMISS CASE
11-23-2022 [36]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or denied without prejudice. If granted, converted to chapter 7.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors [11 U.S.C. § 1307(c)(1)] and because the debtor has failed to make all payments due under the plan [§ 1307(c)(4)]. Doc. #36.

Matthew Lee Crippen ("Debtor") filed written opposition on December 29, 2022, but it was neither timely filed before the December 28, 2022 responsive pleading deadline, nor served on Trustee. Doc. #42. However, Debtor's attorney filed the same response in a different case on December 28, 2022 at 4:57:55 p.m. See Case No. 22-11934, Doc. #23.

This matter will be called and proceed as scheduled to inquire (1) from the Debtor about the response and whether it was served, (2) how the Trustee replies to Debtor's response, and (3) whether a modified plan has been filed and set for hearing, and if so, whether Debtor is current on such modified plan. The court may GRANT the motion and CONVERT the case to chapter 7 or may CONTINUE the motion to the date and time as the confirmation hearing on Debtor's modified plan.

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 the creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the

granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. 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.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to timely make payments due under the plan.

Trustee has reviewed the schedules and determined that this case has a liquidation value of \$65,378.00 after trustee compensation if the case were converted to chapter 7. Doc. #38. This amount is comprised of the value of Debtor's extensive personal property. If Debtor were to amend the exemptions, there would remain non-exempt equity that could be realized for the benefit of unsecured creditors should the case be converted to a Chapter 7.

In response, Debtor says that he thought the case was dismissed, so he filed a new, *pro se* chapter 13 bankruptcy on November 2, 2022. *Id.*; see also, Case No. 22-11875 (*pro se*). That case is before the Honorable Jennifer E. Niemann and has a pending motion to dismiss filed by Trustee set for hearing on February 2, 2023. After discussing with counsel, Debtors believe the delinquency in this case can be cured by filing a modified plan to bring the Debtor current. Doc. #42.

This matter will be called as scheduled to inquire (1) whether Debtor's response was served, (2) how the Trustee replies to Debtor's response, and (3) whether a modified plan has been filed and set for hearing, and if so, whether Debtor is current on such modified plan. The court may GRANT the motion and CONVERT the case to chapter 7 or may CONTINUE the motion to the date and time as the confirmation hearing on Debtor's modified plan.

9. [22-10975](#)-B-13 **IN RE: MIRALDA GOMEZ**
[SL-2](#)

MOTION TO VALUE COLLATERAL OF SYNCHRONY BANK
12-9-2022 [\[52\]](#)

MIRALDA GOMEZ/MV
SCOTT LYONS/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.

Miralda Gomez ("Debtor") requests an order valuing a Tempur-Pedic mattress ("Property") at \$600.00. Doc. #52. The Property is the collateral of Synchrony Bank ("Creditor") and was purchased on September 20, 2020, which is more than one-year before the petition date.² Doc. #54.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 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. *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 *prima facie* showing that the movant is entitled to the relief sought, which the movant has done here.

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) that collateral is personal property other than a motor vehicle acquired for the personal use of the debtor, and (3) the debt was incurred within one year preceding the filing of the petition.

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."

Here, Property is personal property other than a motor vehicle and was obtained via purchase money security interest on September 20, 2020, which is more than one year before the June 10, 2022 petition date. Doc. #54. Therefore, the elements of § 1325(a)(*) are not met and § 506 is applicable.

Debtor's declaration states that the replacement value of the Property is \$600.00. *Id.* Creditor does not appear to have filed a secured proof of claim for Property specifically but does have two unsecured claims for revolving lines of credit in the amounts of \$3,385.92 and \$1,616.92, respectively. See Claims 15-16. The court makes no finding as to whether Synchrony Bank is secured by Property. Both Debtor's and counsel's declarations state Synchrony Bank claims a security interest but there is no evidence for the court to make that determination.

Debtor is competent to testify as to the value of the Property. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). If secured, Creditor's secured claim for Property will be fixed at \$600.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the plan.

² Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process on December 9, 2022. Doc. #58.

10. [22-11488](#)-B-13 **IN RE: ROGER HERNANDEZ**
[BDB-2](#)

MOTION TO DISMISS CASE
12-20-2022 [\[35\]](#)

ROGER HERNANDEZ/MV
BENNY BARCO/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 court will issue an order.

Roger Hernandez ("Debtor") moves to voluntarily dismiss this case pursuant to 11 U.S.C. § 1307(b). Doc. #35.

This matter will be called and proceed as scheduled. The court intends to GRANT this motion.

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

Debtor has an absolute right to dismiss this case at any time under § 1307(b) provided that the case has not been previously converted under §§ 706, 1112, or 1208. *Nichols v. Marana Stockyard & Livestock Mkt., Inc. (In re Nichols)*, 10 F.4th 956, 964 (9th Cir. 2021). Here, Debtor previously converted the case from chapter 7 to chapter 13 on November 10, 2022 pursuant to § 706(a). Doc. #24. Therefore, Debtor is ineligible for § 1307(b) dismissal as a right because the case was previously converted under § 706. Thus, the court may also re-convert this case to chapter 7 or dismiss with consequences of dismissal under § 1307(c). This allows any "party in interest" to move the court to dismiss or convert a Chapter 13 case.

11 U.S.C. § 105(a) allows the court to issue an order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. The court is not precluded from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement orders, rules, or prevent an abuse of process. § 105(a).

11 U.S.C. § 349(a) affords the court judicial discretion to impose a variety of consequences of dismissal. *Duran v. Rojas (In re Duran)*,

630 B.R. 797, 809 (B.A.P. 9th Cir. 2021). For "cause," the court may "order otherwise" to impose in a dismissal a prohibition on the discharge of any debt that could have been discharged in the dismissed case or an injunction from filing future bankruptcy petitions. *Ibid.*; § 349(a).

"Cause" has not been defined, but typically § 349(a) requires a showing of egregious conduct. "Generally, only if a debtor engages in egregious behavior that demonstrates bad faith and prejudices creditors . . . will a bankruptcy court forever bar the debtor from seeking to discharge then existing debts." *In re Tomlin*, 105 F.3d 933, 936-37 (4th Cir. 1997).

The test to determine whether there is bad faith is the "totality of the circumstances" test. *Leavitt v. Soto (In re Leavitt)*, 209 B.R. 935, 939 (B.A.P. 9th Cir. 1997), citing *In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994). The court must consider the following four factors:

- (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his Chapter 13 petition or plan in an inequitable manner;
- (2) the debtor's history of filings and dismissals;
- (3) whether the debtor only intended to defeat state court litigation; and
- (4) whether egregious behavior is present.

Duran, 630 B.R. at 810, citing *Leavitt*, 171 F.3d at 1224; see also, *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982); *In re Chinichian*, 784 F.2d 1440, 1445-46 (9th Cir. 1986). The burden is on the debtor to prove that the petition was filed in good faith. *In re Powers*, 135 B.R. 980, 997 (Bankr. C.D. Cal. 1991).

Here, Debtor does not appear to have any previously filed bankruptcy cases. This case was filed as a chapter 7 bankruptcy on August 28, 2022. Doc. #1. Debtor voluntarily converted the case on November 10, 2022 because he had sufficient disposable income to pay creditors under a chapter 13 plan. Docs. #22; #24. Recently, Debtor lost his employment and no longer has sufficient disposable income to pay creditors under a chapter 13 plan. Doc. #37. This constitutes "cause" to dismiss or convert the case under § 1307(c).

If re-converted to chapter 7, Debtor's significant assets—vehicles, bank accounts, and retirement—appear to be entirely encumbered or exempted. See *Am. Scheds. A/B, C*, Doc. #34; *Sched. D*, Doc. #1. A *de minimis* amount of proceeds would remain for the benefit of unsecured claims.

Additionally, nothing in the record suggests that Debtor has misrepresented facts in the petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed the petition and plan in an inequitable manner. Though Debtor did convert the case after he

obtained employment, this voluntary dismissal comes promptly after losing such employment. There is no indication that Debtor filed bankruptcy only to defeat state court litigation or otherwise engaged in egregious behavior.

The hearing on this motion will be called and proceed as scheduled. Opposition may be presented at the hearing. In the absence of opposition, the court may GRANT this motion and DISMISS this case WITHOUT PREJUDICE.

11. [22-11488](#)-B-13 **IN RE: ROGER HERNANDEZ**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-2-2022 [\[30\]](#)

MICHAEL MEYER/MV
BENNY BARCO/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled as moot.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

Debtor filed a motion to voluntarily dismiss this case in matter #10 above. BDB-2. The court intends to grant that motion. Even if the motion is not granted, the debtor filed amended schedules on December 16, 2022, so the objection will be OVERRULED AS MOOT.

12. [22-11595](#)-B-13 **IN RE: DEANDRE SUTTON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-19-2022 [\[23\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

If the installment fees due at the time of hearing are paid before the hearing, 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.

13. [22-11710](#)-B-13 **IN RE: DAVID/NANCY HALL**
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK
NATIONAL ASSOCIATION
12-2-2022 [\[25\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained in part; overruled in part.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation to be determined at the hearing.

This objection was originally heard on January 4, 2023 and continued to January 11, 2023 to be heard after the rescheduled meeting of creditors on January 10, 2023. Docs. #44; #47.

U.S. Bank National Association ("Creditor") objected to confirmation of the *Chapter 13 Plan* ("Plan") filed by David Lance Hall and Nancy Lee Hall (collectively "Debtors") on November 1, 2022. Doc. #25.

Debtors responded. Doc. #36.

On the petition date, Creditor had a claim secured by real property commonly known as 12518 Branch Court, Bakersfield, CA 93312 ("Property") in the approximate sum of \$58,353.88, including arrears in the amount of \$31,618.56. Doc. #25; *cf.* Claim 15-1. Copies of the promissory note and deed of trust are attached as exhibits; however, the exhibits were not supported by any authenticating or identifying declarations. Doc. #27; *see also*, Fed. R. Evid. 901. The court notes that Creditor also has a \$679,197.30 claim secured by Property, which includes \$241,049.15 in arrears. *See* Claim 14-1. That claim does not appear to be the subject of this objection.

Creditor is listed in the Plan as a Class 4 creditor: secured claims paid directly by the Debtors that will mature after completion of the plan, are not in default, and are not modified by the plan. Doc. #18.

The Plan proposes that Debtors shall pay Creditor directly \$2,700.00 per month, but it is unclear whether this payment is applicable to Creditor's Claim 14, Claim 15, or both. Nonstandard provision 7.01 provides:

Section 3.10 is modified to provide that Debtors are seeking a loan modification with Class 4 secured creditor US Bank Home Mortgage. The loan is not current now, and based on communications with Creditor, Debtors expect the payment to be \$2,700.00 monthly. If the loan modification is granted, Debtors will be current.

Id.

First, Creditor objected to confirmation of the Plan under 11 U.S.C. § 1322(b)(5) because the plan fails to provide for the curing of the default on Creditor's claim. Doc. #25.

In response, Debtors claimed that Creditor has no real reason to object to the Plan, because it will be given stay relief and objecting will delay such stay relief. Doc. #36. Debtors said there will not be *res judicata* if the Plan is confirmed because Nonstandard Provision 7 states that the payments are not current.

Section 3.02 of the Plan provides that it is the proof of claim, not the Plan itself, that determines the amount that will be repaid under the Plan. Doc. #18. Creditor's Claim 15, filed December 13, 2022, states a claimed arrearage of \$31,418.56. But if the Plan is confirmed, the automatic stay will be terminated for Class 4 creditors. Plan, *id.* § 3.14. Debtors may need to modify the Plan to account for the arrearage. If they do not and the Plan is confirmed, Creditor will have stay relief, and if the Plan is modified, then this objection may be moot. With respect to the payment on account of Creditor's claim, the objection will be OVERRULED IN PART.

However, Creditor is still improperly listed in Class 4 because its claim is in default, and Class 4 is limited to claims that mature after completion of the Plan, are not in default, and are not modified by the Plan. Since this classification violates the express terms stated in the Plan, Creditor's objection will be SUSTAINED IN PART.

Creditor's claim is not eligible for Class 4 notwithstanding any benefit of stay relief conferred to Creditor by its Class 4 designation. At present, any loan modification is speculative despite Debtor's intentions, so the Plan is not currently confirmable. If Debtor is successful in obtaining a loan modification, Debtor can file a new, modified plan, but the Plan as is cannot be confirmed.

Second, Creditor objected under § 1325(a)(6) because the Plan fails to provide how Debtors will be able to make all payments under the Plan and comply with the Plan. Doc. #25. In addition to the \$2,700.00 Class

4 payment to Creditor, Debtors will be required to make monthly payments of \$942.00 per month for 36 months to Trustee. Doc. #18. However, Debtors' schedules indicate that they have monthly net income of only \$941.82 per month. Doc. #17. If Creditor's entire claim and arrearage are fully provided for in the Plan, Debtors will have insufficient income to fund the proposed Plan.

Debtors acknowledged that they will have insufficient monthly net income to fund the Plan if the parties are unable to agree on a loan modification. Doc. #36. As above, any loan modification is speculative until completed. Therefore, the Plan is infeasible as proposed.

This matter will be called and proceed as scheduled to inquire about the status of Debtors' loan modification. The court is inclined to SUSTAIN IN PART this objection because Creditor's claim is designated as Class 4 despite being in default and the Plan is not feasible. The objection will be OVERRULED IN PART as to the amount repaid to Creditor under the Plan because it is the proof of claim, not the Plan itself, that determined the amount Creditor will be repaid.

14. [22-11710](#)-B-13 **IN RE: DAVID/NANCY HALL**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
12-2-2022 [\[29\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

After posting the original pre-hearing dispositions, the court has supplemented its intended ruling on this matter.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained in part; overruled in part.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation to be determined at the hearing.

This objection was originally heard on January 4, 2023 and continued to January 11, 2023 to be heard after the rescheduled meeting of creditors on January 10, 2023. Docs. #45; #48.

Chapter 13 trustee Michael H. Meyer ("Trustee") objected to confirmation of the *Chapter 13 Plan* ("Plan") filed by David Lance Hall and Nancy Lee Hall (collectively "Debtors") on November 1, 2022. Doc. #29.

Debtors responded. Doc. #38.

This matter will be called and proceed as scheduled. The court intends to SUSTAIN IN PART this objection because a secured creditor is improperly designated as Class 4 and the Plan does not appear to be feasible.

Trustee objected for four reasons: (1) the Plan fails to provide for the full payment, in deferred cash payments, of all claims entitled to priority under 11 U.S.C. § 507 [11 U.S.C. § 1322(a)]; (2) the Plan fails to provide for the value, as of the effective date of the Plan, of property to be distributed under the Plan on account of each allowed unsecured claim in at least the amount that would be paid if the estate were liquidated under chapter 7 [§ 1325(a)(4)]; (3) Debtors will not be able to make all payments under the Plan and comply with the Plan [§ 1325(a)(6)]; and (4) the Plan has not been proposed in good faith and/or Debtors filed the petition in bad faith [§ 1307(a)(3) & (a)(7)]. Doc. #29.

First, Debtors' schedules and Plan provide for payment of a priority claim to the Internal Revenue Service ("IRS") in the sum of \$1,000.00. Doc. #18. However, the IRS filed a priority claim for taxes or penalties owed under § 507(a)(8) in the sum of \$5,767.81, so the Plan fails to provide for all claims entitled to priority. See Claim 9-1.

In response, Debtors said they intended to pay all priority claims other than domestic support obligations in full, regardless of the estimated amounts owed. Docs. ##38-39. However, Debtors acknowledged that they may be required to increase their monthly plan payment if the Plan is not feasible. *Id.*

Second, Debtors scheduled a \$5,000.00 ownership interest in a "Cabin" with a total value of \$20,000.00. *Sched. A/B* ¶ 1.2, Doc. #17. No other information is provided. *Schedules G & H* do not reflect any executory contracts, unexpired leases, or co-debtors in the cabin. *Id.* However, *Schedule A/B* does indicate that the "Hall Trust" holds the title to Debtors' home and cabin. Trustee objects because Debtors have not met their burden of proof that the unsecured creditors would not receive a return if the cabin was liquidated under chapter 7. Doc. #29.

Joint debtor David Hall declared in response that he owns a 25% interest in a cabin that is worth \$20,000.00. Doc. #39. Debtors claim to have provided all information about it, as well as their trust, to Trustee. *Id.*

Third, Trustee noted that Debtors previously filed chapter 13 case no. 22-10628 on April 12, 2022, which was dismissed on August 4, 2022 for failure to make plan payments. Doc. #29. According to Debtors' *Statement of Financial Affairs*, joint debtor David Lance Hall received the following combined gross income from employment or from operating a business in the last three years:

	<u>David Hall</u>	<u>Nancy Hall</u>
a. January 1, 2022 to petition date:	\$514.57	\$0.00
b. Year 2021:	\$3,647.92	\$0.00
c. Year 2020:	\$4,973.25	\$0.00

Doc. #17. Additionally, Debtors received the following other income from Social Security:

	<u>David Hall</u>	<u>Nancy Hall</u>
a. January 1, 2022 to petition date:	\$18,900.00	\$10,170.90
b. Year 2021:	\$18,590.00	\$9,120.00
c. Year 2020:	\$0.00	\$9,120.00

Id. ¶ 5 at 2. Trustee requested documents such as bank statements to review the income from rent receipts, contributions, and insurance commissions, but none have been provided. Doc. #29. Thus, Trustee objects because Debtors have failed to prove that they are able to make all payments under the Plan.

Mr. Hall declared that both Debtors became sick, and he was hospitalized, after filing their first chapter 13 bankruptcy in 2022. Doc. #39. That case was precipitated by a foreclosure despite being offered a loan modification. Although joint debtor Nancy Hall is still sick, Mr. Hall is now able to work. *Id.* Although Debtors' prior income history was insufficient to afford the plan payment and living expenses, Mr. Hall has recently obtained employment with a base salary and the ability to earn substantial commissions. *Id.* The requested documentation about income has been provided to Trustee.

Fourth, Trustee claims that Debtors are not entitled to a discharge. *Id.* Debtors have failed in two petitions to provide information to Trustee and now seek to discharge \$198,000 in unsecured debt with a 36-month plan, to reduce the interest rate on their vehicle, and to surrender solar panels that Debtors know will not be removed. Additionally, Debtors violate the express language in the Plan by placing secured creditor U.S. Bank in Class 4 despite being in default.

"Good faith" is not specifically defined and is subject to multiple interpretations. *In re Goeb*, 675 F.2d 1386, 1388 (9th Cir. 1982). Whether a plan is filed in good faith is determined by the totality of the circumstances. *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999). The test to determine "good faith" includes: (1) whether the debtor has misrepresented facts, manipulated the Bankruptcy Code or filed in an inequitable manner; (2) the debtor's history of bankruptcy filings; (3) whether the debtor intended to frustrate the collection of state court judgments; and (4) whether "egregious behavior is present." *In re Welsh*, 711 F.3d 1120, 1132 (9th Cir. 2013). Trustee contends evidence of bad faith exists based on Debtors' previous filings, lack of payments, failure to provide documents, and manipulation of the

Plan to include creditors in provision that are not applicable.
Doc. #29.

In response, Debtors' attorney placed the mortgage in Class 4 because, in another case, he was advised to place a similarly situated creditor in Class 4 with an explanation in the Additional Provisions, so that is what was done here. Doc. #38. Otherwise, U.S. Bank would not be listed as a creditor at all in the plan, which Debtors say would not serve the purpose of the Debtors or the creditor.

But U.S. Bank is still improperly listed in Class 4 because its claim is in default, and Class 4 is limited to claims that mature after completion of the Plan, are not in default, and are not modified by the Plan. Since this classification violates the express terms stated in the Plan, this objection will be SUSTAINED IN PART.

U.S. Bank's claim is not eligible for Class 4 notwithstanding any benefit of stay relief conferred to it by its Class 4 designation. At present, any loan modification is speculative despite Debtor's intentions, so the Plan is not currently confirmable. If Debtor is successful in obtaining a loan modification, Debtor can file a new, modified plan, but the Plan as is cannot be confirmed.

Lastly, Debtors contended that the Plan was not filed in bad faith; rather, Debtors became ill after filing their prior case. *Id.* However, if Debtors do not modify their mortgage loan, their house will likely be foreclosed.

This matter will be called and proceed as scheduled to inquire whether Trustee received the trust and cabin documents, whether those documents indicate that allowed, non-priority unsecured claims will be paid at least as much as they would receive in a chapter 7, the effect of payment in full of all priority claims, and Debtors' good faith in filing the Plan. The court will also inquire about the status of a loan modification with U.S. Bank. The court intends to SUSTAIN IN PART the objection because U.S. Bank is improperly classified in Class 4, and the plan is not feasible.

15. [22-11710](#)-B-13 **IN RE: DAVID/NANCY HALL**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
12-2-2022 [\[32\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This motion was originally heard on January 4, 2023 and was continued to January 11, 2023 to be heard after the rescheduled meeting of creditors on January 10, 2023. Docs. #46; #49. Since then, nothing new has been filed in this case.

Chapter 13 trustee Michael H. Meyer ("Trustee") moved to dismiss this case for cause, including: (1) unreasonable delay by the debtors that is prejudicial to creditors [11 U.S.C. § 1307(c)(1)]; (2) failure to make all payments due under the plan [§ 1307(c)(1) & (c)(4)]; (3) failure of joint debtor Nancy Hall to appear at the 341 Meeting of Creditors on November 29, 2022; (4) failure to provide copies of all payment advices or other evidence of payment received within the 60 days before filing the petition [§ 521(a)(1)(B)(iv), (i)(1), & LBR 1007-1(c)(1)]; and (5) failure to cooperate with the trustee [§§ 521(a)(3)(4), 1307(c). Doc. #32.

David Lance Hall and Nancy Lee Hall (collectively "Debtors") timely filed written opposition. Doc. #41.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors.

First, Trustee noted that the chapter 13 plan includes the Class 4 claim of US Bank Home Loans, which is not current. Doc. #32. Since creditors in Class 4 are secured claims that are not in default and that are not modified by the plan, placing this claim in Class 4 constitutes a sanctionable action by Debtors' counsel, claims Trustee. *Id.*

Debtors listed the creditor in Class 4 with an explanation to apprise the court and the Trustee of Debtors' intentions regarding their loan modification. Doc. #41. If this case is not dismissed and no loan modification has been completed, the court intends to sustain the Trustee's objection in matter #14 above.

Second, Trustee said that Debtors have made no payments to Trustee as of the date of this motion in either this case or Debtors' prior chapter 13 case, Case No. 22-10628, which was filed on April 12, 2022 and dismissed on August 4, 2022. Docs. #32; #34.

In response, Debtors claimed that they became ill after filing the previous case, which limited their ability to make any plan payments. Doc. #41. Additionally, Debtors were the victims of identity theft, which resulted in direct deposits being diverted to someone else's account. *Id.* Although their plan payments are not current, Debtors

indicated that they would become current before the January 4, 2023 hearing. They were not current at the time of that hearing. The court will inquire whether Debtors are current on plan payments.

Third, joint debtor Nancy Hall failed to appear at the November 29, 2022 meeting of creditors. Doc. #34. Debtors claimed that they were scheduled to appear at the continued meeting of creditors on January 10, 2023. Doc. #41. The court will inquire whether Debtors appeared at the January 10, 2023 meeting of creditors.

Fourth, Debtors failed to provide copies of all payment advices or other evidence of payments received in the 60 days prior to filing bankruptcy. Docs. #32; #34. Trustee sent a letter to Debtors' counsel requesting these documents on October 5, 2022. The last day to file this document was November 18, 2022. *Id.*

Debtors claimed that the only income received within 60 days of the filing date was from commissions of the now-closed business, which is reflected on the bank statements provided to the Trustee. Doc. #41. Information about Debtors' new job has been provided. *Id.*

Lastly, Debtors failed to cooperate with Trustee by providing all exhibits to the "Trust" and the list of assets claimed to be assets of the trust. Doc. #32. Debtors claim that a list of all trust assets has been provided to the Trustee. Docs. ##41-42.

Trustee has reviewed the schedules and determined that Debtors' significant assets—vehicles and real property—are over-encumbered, and the remaining assets are exempted. Doc. #3. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion, serves the interests of creditors and the estate.

The court will inquire whether Debtors appeared at the meeting of creditors, whether they are current on plan payments or have filed a modified plan, and whether Trustee has received all required documents. This motion may be GRANTED and dismissed or further CONTINUED.

11:00 AM

1. [13-11337](#)-B-13 **IN RE: GREGORY/KARAN CARVER**
[22-1001](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-6-2022 [[1](#)]

CARVER ET AL V. SETERUS INC. ET AL
NANCY KLEPAC/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 15, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of the *Gregory Funding LLC's Unilateral Status Conference Statement* dated January 4, 2023. Doc. #111. It appears that the parties have recommenced settlement discussions and have reached an alternative resolution, which is being circulated to all parties. Accordingly, this status conference will be CONTINUED to February 15, 2023 at 11:00 a.m. to await the conclusion of the parties' settlement negotiations. If not been resolved by the continued hearing date, the parties shall file a joint or unilateral status report not later than seven (7) days before the continued status conference.

2. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1033](#) [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
10-30-2022 [[533](#)]

SUGARMAN V. IRZ CONSULTING, LLC ET AL
JOHN MACCONAGHY/ATTY. FOR PL.
STATUS CONFERENCE CONT'D TO 2/15/23 PER ECF ORDER #588
RESPONSIVE PLEADINGS

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

DISPOSITION: Continued to February 15, 2023 at 11:00 a.m.

NO ORDER REQUIRED.

On November 17, 2022, the court issued an order continuing this status conference to February 15, 2023. Doc. #588. Accordingly, this status conference will be dropped and taken off calendar because it is already continued to February 15, 2023 at 11:00 a.m.