



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Wednesday, January 25, 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. [17-13706](#)-B-13     **IN RE: MIGUEL GUTIERREZ AND SONIA CANCHOLA**  
[MHM-2](#)

MOTION TO DISMISS CASE  
12-28-2022    [\[45\]](#)

MICHAEL MEYER/MV  
THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION:        Granted.

ORDER:                The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(6) and (c)(8) for material default by the debtors with respect to a term of a confirmed plan and for termination of a confirmed plan by reason of the occurrence of a condition in the plan other than completion of payments under the plan. Doc. #45. Miguel Gutierrez and Sonia Canchola (collectively "Debtors") did not oppose.

Unless the trustee's motion is withdrawn before the hearing, the motion will be GRANTED without oral argument for cause shown.

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 debtors, 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.

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)(6) (for failure to complete the terms of the confirmed plan).

September 2022 was month 60 of Debtors’ confirmed plan. Doc. #47. As of December 28, 2022, the total claims filed require an aggregate payment of \$113,922.26, but Debtors have only paid \$103,950.00. *Id.* The remaining claims, plus Trustee compensation, require an additional \$9,972.26 to be paid into the plan.

Trustee has reviewed Debtors’ *Schedules A/B* and *D*, which show that Debtors’ significant assets—vehicles and real property—are over encumbered. Doc. #45. Debtors claim exemptions in the remaining assets. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion to chapter 7, serves the interests of creditors and the estate.

Accordingly, the motion will be GRANTED. The case will be dismissed.

2. [22-11806](#)-B-13     **IN RE: GUSTAVO/ARACELI CERVANTES**  
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE  
MICHAEL H. MEYER  
12-6-2022    [\[13\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Overruled.

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

This objection was originally heard on December 20, 2022 and continued to January 25, 2023. Doc. #16.

Chapter 13 trustee Michael H. Meyer (“Trustee”) objected to the confirmation of Gustavo Cervantes’ and Araceli Cervantes’ (collectively “Debtors”) *Chapter 13 Plan* dated October 21, 2022 under Local Rule of Practice (“LBR”) 3015-1(c)(4) because the plan has not been proposed in good faith [11 U.S.C. § 1325(a)(3)] and/or the filing of the petition was in bad faith [§ 1325(a)(7)]. Doc. #13.

Trustee compared this case to *In re Paley*, 390 B.R. 53 (Bankr. N.D.N.Y. 2008), in that Debtors cannot receive a chapter 7 discharge,

so they filed chapter 13 and proposed a plan with an insignificant distribution to unsecured creditors. *Id.* Essentially, Debtors' plan only proposes to pay attorney fees, so Debtors are in effect in a chapter 7 masquerading as a chapter 13 plan. *Id.*

Additionally, Debtors have presented a discrepancy in their income. The 6-month lookback period for disposable income is April 2022 through September 2022, but Debtors' Form 122C-1 indicates that Debtors received an average monthly income of \$3,025.00 during that period of time. *Id.* Trustee says that Debtors' Wells Fargo Bank statement from June 8 through July 8, 2022 indicates deposits of \$9,443.00 during that time. Further, Debtors provided a bank statement for A&G Transport Hauling Services LLC, but the Statement of Financial Affairs does not reflect any interest in an LLC, so Trustee is unable to determine whether the plan should be confirmed until more information is provided regarding the LLC.

This objection was continued to January 25, 2023 and Debtors were directed to file a written response by January 11, 2023, or a confirmable modified plan not later than January 18, 2023. Doc. #17. Trustee's reply, if any, was due not later than January 18, 2023. *Id.*

Debtors timely responded. Doc. #19. Trustee did not reply. The response is directed to Trustee's motion to dismiss, but no motion to dismiss has been filed here. Debtors contend that this case was filed in good faith because 19% of their payments will go to unsecured creditors (a 1% distribution), it was filed to stop harassment from a creditor, there are no secured creditors whose payments are being delayed under the plan, joint debtor Gustavo Cervantes is eligible for a chapter 7 discharge, and joint debtor Araceli Cervantes will be eligible for a chapter 7 discharge before a discharge is entered in this chapter 13 case. *Id.*

First, since this case has a 1% distribution to unsecured creditors, they will receive more than they would if Debtors were in chapter 7 because neither joint debtor makes enough money for a wage garnishment. Debtors cite to *In re Lavilla*, in which the Honorable W. Richard Lee suggested that debtors can establish their good faith by producing evidence in support of confirmation to address the issue and they should explain the circumstances that compel them to seek another discharge of virtually all of their obligations at a time when they are not yet eligible for a chapter 7 discharge. *In re Lavilla*, 425 B.R. 572, 582 (Bankr. E.D. Cal. 2010).

Second, Debtors claim that they filed this case to stop harassment from a creditor. Doc. #19. Joint debtor Araceli Cervantes' declaration outlines the threats against them and their family from a creditor. Doc. #20. Debtors are seeking a restraining order and filed bankruptcy with the hope that a legal discharge of the debt will cause the creditor to leave them alone. *Id.*

As to the income discrepancies, Debtors say this is an oversight and they have amended their schedules. *Id.*; Doc. #21; *cf.* Docs. ##23-24. In sum, Debtors argue that the totality of the circumstances make it apparent that the case was filed in a good faith attempt to reorganize their finances and prevent substantial harm. Namely, bankruptcy protection (1) hopefully prevents harassment, (2) provides a greater distribution to unsecured creditors than they would get otherwise, (3) requires a longer duration to a discharge than waiting for the 8-year chapter 7 bar to pass, and (4) does not significantly prejudice their creditors.

This objection will be called and proceed as scheduled to inquire whether Debtors' amended schedules have resolved the income discrepancy. If so, this objection may be OVERRULED.

3. [21-12008](#)-B-13     **IN RE: CELESTE MURILLO**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-23-2022    [\[78\]](#)

MICHAEL MEYER/MV  
JASON VOGELPOHL/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will be called as scheduled.

DISPOSITION:                Granted or continued.

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") moves to dismiss this case for cause pursuant to 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay by the debtor that is prejudicial to creditors and for material default with respect to a term of a confirmed plan by failing to make all payments due under the *Third Amended Chapter 13 Plan* dated December 20, 2021, confirmed June 10, 2022 ("Confirmed Plan"). Doc. #78.

Celeste Lucia Murillo ("Debtor") timely filed written opposition and the *Fifth Modified Chapter 13 Plan* dated December 29, 2022 ("Proposed Plan"). Docs. #82; #87. The Proposed Plan is set for hearing on February 15, 2023. Doc. #84.

This matter will be called and proceed as scheduled. The court will inquire whether Debtor is current on plan payments under the Proposed Plan. If not, this motion may be GRANTED, and the case dismissed. If so, this motion may be CONTINUED to February 15, 2023 at 9:30 a.m.

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 except Debtor 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 except Debtor 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).

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) and (c)(6) for unreasonable delay by the Debtor that is prejudicial to creditors, and material default with respect to a term of a confirmed plan by failing to make timely payments.

Here, Trustee declares that Debtor has failed to make all required payments due under the Confirmed Plan. Doc. #80. As of December 23, 2022, payments are delinquent in the amount of \$5,412.00. *Id.* Prior to and on the date of this hearing, additional payments of \$1,509.00 will become due on December 25, 2022 and January 25, 2023. *Id.* Thus, if no payments were made under the Confirmed Plan by the time of the hearing, the total amount due on that date would be \$8,430.00.

Trustee has reviewed the schedules and determined that Debtor's significant assets—a vehicle and household goods—are exempted. This case has a liquidation value of \$1,453.04 after trustee compensation. Because there is a *de minimis* amount of equity to be realized for the benefit of the estate, dismissal, rather than conversion, serves the interests of creditors and the estate.

In response, Debtor filed the Proposed Plan, which should resolve Trustee's concerns and the plan payment delinquency. Docs. #82; #87. The Proposed Plan reduces monthly payments to \$156.00 per month for the last 49 months of the plan.

This matter will be called and proceed as scheduled. The court will inquire whether Debtor is current on plan payments under the Proposed Plan. If not, this motion may be GRANTED, and the case dismissed. If Debtor is current under the Proposed Plan, this motion may be CONTINUED to February 15, 2023 at 9:00 a.m. to be heard in connection with the motion to confirm the Proposed Plan.

4. [22-11410](#)-B-13     **IN RE: HOWARD/KIM CRAUSBY**  
[DAB-3](#)

MOTION TO CONFIRM PLAN  
12-16-2022    [\[70\]](#)

KIM CRAUSBY/MV  
DAVID BOONE/ATTY. FOR DBT.

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

DISPOSITION:        Denied without prejudice.

ORDER:                The court will issue an order.

Howard Franke Crausby and Kim Renee Crausby (collectively "Debtors") seek an order confirming the *Third Amended Chapter 13 Plan* dated December 10, 2022 ("Proposed Plan"). Doc. #70. The 60-month, 100% plan proposes that Debtors shall pay \$1,895.00/month for 12 months, and then \$3,200.00/month for the remaining 48 months. Doc. #38. Debtors' *Amended Schedules I & J* indicate that they receive \$2,335.87 in monthly net income, which is sufficient to fund the first 12 months of plan payments, but not the remaining 48 months. Doc. #31.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR") and Federal Rules of Bankruptcy Procedure ("Rule").

First, Debtors filed a second motion to confirm the Proposed Plan on December 27, 2022, which is set for hearing on February 1, 2023. Doc. #75. This constitutes an unauthorized continuance. Continuances without a court order are not permitted under the Local Rules of Practice ("LBR"). See LBR 9014-1(j).

Second, the motion fails to comply with Rule 9013 and LBR 9014-1(d)(3)(A). Rule 9013 requires a request for an order to be by written motion, unless made during a hearing. "*The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought.*" Rule 9013 (emphasis added). This particularity requirement is restated in the local rules:

The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and *shall state with particularity the factual and legal grounds therefor*. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability.

LBR 9014-1(d)(3)(A).



Here, the motion states: (a) Debtors filed chapter 13 bankruptcy on August 17, 2022, (b) the chapter 13 trustee's objection to claimed exemptions was resolved and withdrawn, (c) Debtors filed the Proposed Plan on October 10, 2022 to resolve remaining objections by the trustee, (d) Debtors have made the appropriate changes, and (e) Debtors have made additional payments and shall be current at the time of the hearing. Doc. #70.

This is insufficient. Although Debtors did include some of the required factual bases in the motion, it omits citation to any statutes, caselaw, or local rules. The elements required for confirmation of a plan under 11 U.S.C. § 1325 were entirely omitted from the motion. The court notes that these legal elements were discussed in the declarations in support of the motion, but they should have also been included in the motion.

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

5. [22-12129](#)-B-13     **IN RE: BILLIE TENA**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
12-16-2022    [\[9\]](#)

MICHAEL MEYER/MV  
CARL GUSTAFSON/ATTY. FOR DBT.

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

DISPOSITION:     Overruled as moot.

ORDER:             The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Billie Jeanette Tena's ("Debtor") claim of exemptions in assets under both Cal. Code Civ. Proc. ("CCP") §§ 703.140(b) and 704. Doc. #9. Thereafter, Debtor filed an *Amended Schedule C* on December 20, 2022 and claimed exemptions under CCP §§ 704.010, *et seq.*, only. Doc. #12. Accordingly, this objection will be OVERRULED AS MOOT based on Debtor's amendment.

6. [22-11934](#)-B-13     **IN RE: JOSE HERNANDEZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-23-2022    [\[19\]](#)

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

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

DISPOSITION:     Withdrawn.

NO ORDER REQUIRED

The chapter 13 trustee withdrew this motion on January 17, 2023. Doc. #28. Accordingly, this matter will be dropped and taken off calendar pursuant to the trustee's withdrawal.

7. [22-11559](#)-B-13     **IN RE: MISAEL DELGADO AND VERONICA ZAMUDIO**  
[AF-3](#)

MOTION TO CONFIRM PLAN  
12-9-2022    [\[66\]](#)

VERONICA ZAMUDIO/MV  
ARASTO FARSAD/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

Misael Cordero Delgado and Veronica Rivas Zamudio (collectively "Debtors") seek confirmation of the *First Amended Chapter 13 Plan* dated December 9, 2022. Doc. #66. The 60-month, 26% distribution plan proposes that Debtors shall pay \$175.00/month for the first three months, and \$5,585.00/month for the remaining 57 months. Doc. #68. Debtors' *Amended Schedules I & J* indicate that they receive \$5,595.00 in monthly net income, which is sufficient to fund the proposed plan. Doc. #69.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to plan confirmation because Debtors will not be able to make all payments under the plan and comply with the plan as required by 11 U.S.C. § 1325(a)(6). Doc. #82.

Debtors replied.

This matter will be called and proceed as scheduled.

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 U.S. Trustee, or any other party in interest except Trustee 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 except Trustee 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).

First, Trustee says that Equidy Mortgage was moved from Class 4 direct to Class 2 to be paid through the plan, but there is no start date provided in the additional provisions, so the payment would begin in month 1. Doc. #82. However, payments for months 1-3 are \$175.00/month, which is insufficient to fund the Class 2 dividend.

Second, the dividend for Equidy mortgage would fund the claim over 69 months, so the monthly dividend and monthly plan payment would have to increase to fund over the remaining 57 months if the payments began in month 4. *Id.*

In response, Debtors acknowledge the first issue. Doc. #92. Debtors ask if this issue could be resolved in an order confirming plan rather than filing a second amended plan. This would result in Equidy Mortgage being paid the Class 2 monthly dividend beginning month 4, rather than month 1.

Second, Debtors disagree with the second issue and believe that the proposed plan payment to Equidy Mortgage will fund within the term limits of a chapter 13. *Id.*

This matter will be called as scheduled to inquire about Trustee's reply. If Trustee's objection is resolved and the motion is granted, any confirmation order shall include the docket control number of the motion and shall reference the plan by the date it was filed.

8. [22-11559](#)-B-13     **IN RE: MISAEL DELGADO AND VERONICA ZAMUDIO**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
11-22-2022    [\[51\]](#)

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

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

DISPOSITION:     Withdrawn.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this motion on January 18, 2023. Doc. #98. Accordingly, this matter will be dropped and taken off calendar pursuant to the withdrawal.

9. [22-11559](#)-B-13     **IN RE: MISAEL DELGADO AND VERONICA ZAMUDIO**  
[MHM-3](#)

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

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

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

DISPOSITION:     Withdrawn.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this objection on January 17, 2023. Doc. #96. Accordingly, this matter will be dropped and taken off calendar pursuant to the withdrawal.

10. [22-11972](#)-B-13     **IN RE: DAX TURNER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-23-2022    [\[18\]](#)

SCOTT LYONS/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 Order to Show Cause.

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.

11. [22-11679](#)-B-13     **IN RE: DELANO/MONICA WILLIAMS**  
[AVN-2](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK N.A.  
12-21-2022    [\[29\]](#)

MONICA WILLIAMS/MV  
ANH NGUYEN/ATTY. FOR DBT.

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

DISPOSITION:                Denied without prejudice.

ORDER:                        The court will issue an order.

Delano Jamere Williams and Monica Marlene Williams (collectively "Debtors") request an order valuing a 2014 Cadillac XTS ("Vehicle") at \$15,757.00. Doc. #29. The Vehicle is the collateral of Wells Fargo Bank, N.A. dba Wells Fargo Auto ("Creditor"), and was purchased in August of 2019, which is more than 910 days preceding the petition date. Doc. #31.

This is Debtors' second attempt at valuing Vehicle. The previous attempt was denied without prejudice on December 14, 2022 because Debtors did not present evidence of Vehicle's replacement value and

Creditor was not properly served. Docs. ##27-28. Debtor resolved the first defect by including a declaration as to Vehicle's replacement value, but it does not appear that Creditor was served by certified mail.

Fed. R. Bankr. P. ("Rule") 3012(b) provides that a request to determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 13 case. When the request is made in a chapter 13 plan, the plan must be served in the manner provided in Rule 7004.

Rule 3012(b) is silent as to whether a determination of value by motion or claim objection requires Rule 7004 service. However, Rule 9014(b) requires contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. "Valuations pursuant to 11 U.S.C. § 506(a) and [Rule] 3012 are contested matters and do not require the filing of an adversary proceeding." *In re Well*, 2009 Bankr. LEXIS 5679 at \*4 (Cal. E.D. Bankr. May 7, 2009); *see also In re Johnson*, 2020 Bankr. LEXIS 1730 at \*1 (Bankr. D.D.C. July 2, 2020) (denying motion to value a motor vehicle because the debtor did not affect proper service under Rule 7004, which is required under Rule 9014); *In re Kelley*, 2020 Bankr. LEXIS 1276 at \*\*1-2 (Bankr. D.D.C. May 11, 2020) (reasoning that a motion to redeem a vehicle under § 722, which implicated § 506(a)(2) to the extent the vehicle was secured, initiated a contested matter requiring Rule 7004 service). On this basis, Creditor must be served in accordance with Rule 7004 regardless of whether the valuation occurs by motion or by the chapter 13 plan.

Creditor is a bank insured by the Federal Deposit Insurance Corporation ("FDIC"), so it is an insured depository institution under 11 U.S.C. § 101(35)(A) and 12 U.S.C. § 1813(c)(2) (an "insured depository institution" is any bank insured by the FDIC).<sup>1</sup>

Service on insured depository institutions is governed by Rule 7004(h), which requires service to be made by **certified mail and addressed to an officer**, unless one of three exceptions specified in subsections (h)(1) to (3) have been met. There is no indication that any of these exceptions apply. Under Rule 7004(i), an officer does not need to be named in the address if the envelope is addressed to the proper address and directed to the attention of the officer's position or title.

Here, Debtor served this motion, supporting documents, and the chapter 13 plan on Creditor addressed to a named officer. Docs. ##33-34; #42; #44. However, each of the certificates of service indicate that Creditor was served by first class mail, not certified mail. *Id.* Creditor's address is on the Attachment 6B1 mailing list, which is for parties served via first class mail.

Accordingly, this motion will be DENIED WITHOUT PREJUDICE because Creditor was not properly served in accordance with Rule 7004(h) as required by Rules 3012(b) and 9014(b).

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<sup>1</sup> See FDIC Cert. #27389, BankFind Suite, <https://banks.data.fdic.gov/bankfind-suite/bankfind> (visited Jan. 23, 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).

12. [22-10387](#)-B-13      **IN RE: MATTHEW/MARGARET TORRES**  
[FW-3](#)

MOTION TO SELL  
12-14-2022    [\[73\]](#)

MARGARET TORRES/MV  
GABRIEL WADDELL/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.

Matthew Torres and Margaret Rose Torres (collectively "Debtors") seek authorization to sell the estate's interest in a 2010 Chevrolet Silverado 1500 ("Vehicle") *nunc pro tunc* and to use the proceeds to purchase a replacement vehicle. Doc. #73.

No party in interest timely filed written opposition. This motion will be called as scheduled. The court is inclined to GRANT the motion.

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 debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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).

Debtors owned Vehicle at the time this case was filed, which was listed in *Schedule A/B* with a value of \$10,555.00. Doc. #1. Debtors claimed a \$10,555.00 exemption in Vehicle, and it was not encumbered

by any liens. *Id.* On May 25, 2022, Debtors sold Vehicle to Adriana Lemas ("Buyer") for \$7,000.00. Doc. #75. Joint debtor Matthew Torres declares that this was an arm's-length transaction and Debtors have no prior relationship with Buyer. *Id.* Mr. Torres researched Kelley Blue Book and believes that the \$7,000.00 sale price accurately reflects Vehicle's fair market value. *Id.*

At the time of the sale, Debtors were unaware of the requirement to obtain bankruptcy court approval for the sale. *Id.* Debtors sold the Vehicle because it was very expensive to operate due to its 8-cylinder engine and poor gas mileage. Now, Debtors request *nunc pro tunc* approval of the sale and authorization to purchase a replacement truck that will be less expensive to operate while still allowing Mr. Torres to carry the necessary tools for his trade. *Id.* Debtors intend to pay cash and will only use funds from the sale of Vehicle for the new truck.

The Supreme Court recently rejected federal courts' use of *nunc pro tunc* orders to retroactively re-write the record. *Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano*, 140 S. Ct. 696, 701 (2020). However, some courts have viewed the limitation on *nunc pro tunc* orders as only applying to the creation of jurisdiction. *In re Player's Poker Club, Inc.*, 636 B.R. 811, 825 (Bankr. C.D. Cal. 2022) ("[T]he *Acevedo Feliciano* decision does not change existing law or introduce a new limitation on the *nunc pro tunc* powers of courts. To the contrary, this *per curiam* (unsigned) opinion applies a longstanding limitation on that power: i.e., that it may not be used to create jurisdiction retroactively.").

Though the court does not disagree with the logic of the court in *Player's Poker Club, Inc.*, as applied here, *Acevedo Feliciano* precludes *nunc pro tunc* relief. The Court in *Acevedo* was plain: "'Nunc pro tunc orders are not some Orwellian vehicle for revisionist history - creating facts that never occurred in fact.'" *Acevedo Feliciano*, 140 S. Ct. at 701, quoting *United States v. Gillespie*, 666 F. Supp. 1137, 1139 (N.D. Ill. 1987). The sale was not reviewed prior to being consummated. At present, the sale is an invalid post-petition transaction under 11 U.S.C. § 549.

That said, in the absence of opposition, the court finds the sale to be a reasonable exercise of business judgment by Debtors. This motion will be GRANTED, and the sale will be approved.



13. [19-12388](#)-B-13     **IN RE: CHRISTOPHER/LAURIE MILAUCKAS**  
[MHM-3](#)

MOTION TO DISMISS CASE  
12-28-2022    [\[107\]](#)

MICHAEL MEYER/MV  
GABRIEL WADDELL/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Withdrawn.

NO ORDER REQUIRED

The chapter 13 trustee withdrew this motion on January 17, 2023.  
Doc. #115. Accordingly, this matter will be taken off calendar  
pursuant to the trustee's withdrawal.

14. [22-11488](#)-B-13     **IN RE: ROGER HERNANDEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-29-2022    [\[39\]](#)

BENNY BARCO/ATTY. FOR DBT.  
DISMISSED 1/12/23

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

DISPOSITION:     Dropped and taken off calendar as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on January 12, 2023.  
Doc. #46. The *Order to Show Cause* will be dropped and taken off  
calendar as moot. No appearance is necessary.

15. [22-10791](#)-B-13     **IN RE: HELEN MARTINEZ**  
[PBB-1](#)

MOTION TO MODIFY PLAN  
12-20-2022    [\[28\]](#)

HELEN MARTINEZ/MV  
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order in  
conformance with the ruling below.

Helen G. Martinez ("Debtor") seeks an order confirming the *First Modified Chapter 13 Plan* dated December 20, 2022 ("Plan") pursuant to 11 U.S.C. § 1329. Doc. #28. The 60-month, 100% distribution Plan proposes that Debtor shall pay (a) \$300.00/month for 1 month, (b) \$1,800.00/month for 5 months, (c) \$0.00/month for 1 month (December 2022), and (d) \$1,575.00/month for 53 months. Doc. #33. Debtor's *Amended Schedules I & J* indicate that Debtor receives \$1,642.41 in monthly net income, which is sufficient to afford the proposed payment for months 8-60. Doc. #26.

In contrast to the *Chapter 13 Plan* dated May 10, 2022, confirmed July 11, 2022, payments are currently \$300.00/month for the first month and \$1,800.00 for months 2-60. Docs. #3; #14. 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)(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.

16. [20-11193](#)-B-13     **IN RE: MICHAEL WILKENING**  
[WSL-2](#)

MOTION TO INCUR DEBT  
12-28-2022    [\[34\]](#)

MICHAEL WILKENING/MV  
GREGORY SHANFELD/ATTY. FOR DBT.

NO RULING.

Michael Shawn Wilkening ("Debtor") seeks authorization to incur \$30,768.68 in new debt at 14.75% interest from Capital One Auto Finance ("Lender") for the purchase a 2019 Honda Accord Sedan with 71,501 miles, or a similar available vehicle on similar terms. Doc. #34. Under the terms of the loan, Debtor proposes to make monthly payments of \$650.41 per month over 71 months. *Id.*

No party in interest timely filed written opposition. This motion will be called and proceed as scheduled.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(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). 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).

LBR 3015-1(1)(h)(1)(A) allows a debtor, *ex parte* and with court approval, to finance the purchase of a motor vehicle if the trustee's written consent is filed with or as part of the motion. The trustee's approval is a certification to the court that: (i) all chapter 13 plan payments are current; (ii) the chapter 13 plan is not in default; (iii) the debtor has, in the last 30 days, evidenced the ability to pay all future plan payments, projected living and business expenses, and the new debt; (iv) the new debt is a single loan incurred to purchase a motor vehicle that is reasonably necessary for the maintenance or support of the debtor, a dependent of the debtor, or if debtor is engaged in business, is necessary for the continuation, preservation, and operation of the debtor's business; (v) the only security for the new debt will be the motor vehicle; and (vi) the new debt does not exceed \$20,000.

If the trustee will not give consent, or if a debtor wishes to incur new debt on terms and conditions not authorized by subsection (h)(1)(A), the debtor may still seek court approval under LBR 3015-

1(h)(1)(E) by filing and serving a motion on the notice required by Rule 2002 and LBR 9014-1.

Here, Debtor wants to purchase Vehicle by incurring a \$30,768.68 debt in favor of Lender at 14.75% interest, to be paid over 71-monthly payments of \$650.41 per month. Doc. #36; see also Ex. 5, Doc. #37.

Debtor declares: (i) Debtor is current with chapter 13 plan payments; (ii) the chapter 13 plan is not in default (Ex. 2, Doc. #37); (iii) Debtor's *Amended Schedules I & J* were concurrently filed with this motion and evidence an ability to repay the debt, all future plan payments, and projected living and business expenses (Exs. 3-4, *id.*) ; (iv) the new debt is a single loan incurred to purchase a vehicle that is reasonably necessary for the maintenance and support of Debtor; (v) the only security for the new debt will be the new vehicle. Doc. #36. Debtor appears to have satisfied all elements of LBR 3015-1(h)(1)(A) except that the new debt does exceed \$20,000. LBR 3015-1(h)(1)(A)(vi).

At the time of filing this case, Debtor was borrowing a vehicle to get around. *Id.* Eventually, he saved up enough money to purchase a 2004 Jeep Cherokee for \$2,500.00 in January 2021. *Id.* Now, however, that vehicle is no longer running and would cost more to fix than it is worth. As a result, Debtor wishes to buy a newer, more reliable form of transportation to travel to and from work. *Id.*

Debtor attempted to find a more favorable loan with a lower interest rate through his credit union and other sources, but he was advised that he more than likely would not be able to get a loan through them. *Id.* Since Debtor filed chapter 13 bankruptcy, he does not have a FICO score, and the credit union would not accept his chapter 13 plan payment history as a consideration. Debtor understands that the proposed loan is not a favorable interest rate but believes he can afford to pay the new vehicle payment, the chapter 13 plan payment, and projected living expenses. *Id.*

This is not a favorable arrangement. The proposed vehicle has over 70,000 miles. As Debtor admits, the interest rate is unfavorable. The term of the loan is lengthy. Debtor claims the payments are not a burden, but that is not the only issue. Though the declaration states Debtor tried to obtain loans, elsewhere the statements are vague.

No party in interest timely filed written opposition. This matter will be called and proceed as scheduled. The court will inquire about the above issues. If granted, any order approving the new loan shall provide that Debtor is authorized, *but not required*, to enter into a new loan with Lender to finance the purchase of a vehicle.

17. [22-11595](#)-B-13     **IN RE: DEANDRE SUTTON**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-23-2022    [\[25\]](#)

MICHAEL MEYER/MV  
STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

An order dismissing this case was already entered on January 19, 2023.  
Doc. #34. The motion will be DENIED AS MOOT.

18. [22-10699](#)-B-13     **IN RE: JESUS GUERRA**  
[HDN-2](#)

OBJECTION TO CLAIM OF COMMUNITY IMPROVEMENT CAPITAL LLC,  
CLAIM NUMBER 6  
10-20-2022    [\[121\]](#)

JESUS GUERRA/MV  
HENRY NUNEZ/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

Jesus Lopez Guerra ("Debtor") objects to Proof of Claim No. 6-1 filed by Community Improvement Capital, LLC ("CIC"), on August 15, 2022 in the amount of \$30,000.00. Doc. #121. Debtor also requests the court take judicial notice of certain documents filed in this case. Doc. #125.

After this objection was filed, CIC filed Claims 6-2 and 6-3 on January 5, and 6, 2023, in the amounts of \$70,666.13 and \$71,619.56, respectively. See Claims 6-2, 6-3.

CIC timely filed written opposition and evidentiary objections to the declarations of Debtor's attorney, Henry D. Nunez (Doc. #123), and Debtor (Doc. #124). Docs. ##211-13.

Debtor filed a reply, supplemental declaration, memorandum of points and authorities, and a second request for judicial notice. Docs. ##223-26.

Two days later, CIC filed evidentiary objections to the supplemental declaration of Mr. Nunez (Doc. #224). Doc. #235.

The court may take judicial notice of all documents and other pleadings filed in this case, filings in other court proceedings, and public records. Fed. R. Evid. 201; *Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the requested documents, but not the truth or falsity of such documents as related to findings of fact and conclusions of law. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

This objection will be called and proceed as a scheduling conference. The court intends to rule on CIC's evidentiary objections and set an early evidentiary hearing.

Notably, the Trustee has stated in connection with the plan confirmation motion that he is not including CIC's claimed post-petition fees in the plan calculation. The Plan requires the filing and service of the Notice of Post-Petition Fees under Fed. R. Bankr. Proc. 3002.1.

This matter will be deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an evidentiary hearing.

Based on the record, the legal issues appear to include:

1. Whether CIC's attorneys' fees are reasonable; and
2. Whether CIC's claim should be disallowed in part or in whole.

19. [22-10699](#)-B-13     **IN RE: JESUS GUERRA**  
[HDN-3](#)

MOTION TO CONFIRM PLAN  
12-16-2022    [\[188\]](#)

JESUS GUERRA/MV  
HENRY NUNEZ/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

Jesus Lopez Guerra ("Debtor") seeks confirmation of the *Fifth Modified Chapter 13 Plan* dated December 12, 2022 ("Plan"). Doc. #188. The Plan proposes that Debtor shall pay \$1,050.00 per month for 60 months with a 100% distribution to allowed, non-priority unsecured claims. Doc. #173. Nonstandard Provision 7 provides that Debtor may refinance the real estate and pay Class 2A creditors and Class 7 creditors in full on or before the thirty-sixth (36) month. *Id.* Debtor's Amended

*Schedules I & J* dated October 11, 2022 indicate that Debtor receives \$1,050.20 in monthly net income. Doc. #95.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the Plan. Doc. #209. Trustee says that payments are delinquent through December 2022 in the amount of \$1,050.00. *Id.* Additionally, Trustee notes that despite the objection to claim in matter #18 above, Trustee is not including post-petition attorneys' fees as part of the plan calculation, and under § 3.07(b)(6) of the plan, "if the holder of a Class 1 claim gives Debtor and Trustee notice of post-petition fees, expenses, and charges pursuant to Fed. R. Bankr. P. 3002.1(c), Debtor shall modify this plan if Debtor wishes to provide for such fees, expenses, and charges." *Id.*, quoting Doc. #173.

Super-priority secured creditor Community Improvement Capital, LLC ("CIC") timely objected to confirmation because: (i) the Plan is not proposed in good faith as required by 11 U.S.C. § 1325(a)(3), (ii) Debtor's disposable income is inaccurately inflated to support the Plan and no credible evidence has been provided that Debtor's son, Julio Lopez ("Lopez"), has the ability to contribute any amount to the Plan, and there is no explanation or contingency plan if Lopez or the other relatives cease making contributions in the next five years; (iii) the Plan is not feasible as required by § 1325(a)(6) because the \$832.65 monthly dividend to CIC is less than the \$71,619.56 claim with a 15% interest rate; and (iv) the Franchise Tax Board priority claim in the amount of \$454.30 needs to be paid through the Plan. Doc. #215. CIC also filed evidentiary objections to Lopez's declaration (Doc. #191) and Debtor's declaration (Doc. #193). Docs. ##216-17.

State Court Receiver Mark S. Adams ("Receiver") timely objected to confirmation because: (a) the Plan does not account for any payment to Receiver for his fees and costs incurred in the pending receivership action in Madera County Superior Court, Case No. MCV086188 ("Receivership Action"); and (b) the Plan is not feasible. Doc. #219.

Receiver also requests the court take judicial notice of its proof of claim, the court's November 30, 2022 Civil Minutes, Receiver's monthly accounting from the Receivership Action, and Debtor's amended schedules. Doc. #221. The court may take judicial notice of all documents and other pleadings filed in this case, filings in other court proceedings, and public records. Fed. R. Evid. 201; *Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the requested documents, but not the truth or falsity of such documents as related to findings of fact and conclusions of law. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

Debtor's attorney, Henry D. Nunez, filed a supplemental declaration in support of confirmation on January 18, 2023. Doc. #231. Mr. Nunez also requests continuance of this confirmation hearing until after the

Madera Superior Court has determined what amount, if any, is due to the Receiver.

The next day, CIC filed evidentiary objections to Mr. Nunez's declaration. Doc. #233.

This motion will be called and proceed as scheduled.

20. [22-10699](#)-B-13     **IN RE: JESUS GUERRA**  
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE  
11-17-2022    [\[153\]](#)

MICHAEL MEYER/MV  
HENRY NUNEZ/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

This motion was originally heard on December 20, 2022. Doc. #200.

Chapter 13 trustee Michael H. Meyer ("Trustee") moved to dismiss this case for cause pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4) because Debtor failed to make all payments due under the plan. Doc. #153. As of November 17, 2022, Debtor failed to make all payments due under the plan and was delinquent in the amount of \$4,260.00. Doc. #155. An additional plan payment of \$1,050.00 became due on November 25, 2022 after this motion was filed and before it was heard. *Id.* Additional payments of \$1,050.00 will also become due on December 25, 2022 and January 25, 2023.

On December 6, 2022, super-priority secured creditor Community Improvement Capital, LLC ("CIC") filed a joinder to Trustee's motion. Doc. #165.

On December 7, 2022, Debtor's attorney filed a declaration in opposition to the motion indicating that Debtor has filed a *Fifth Modified Chapter 13 Plan* to cure the delinquency, a motion to confirm the proposed plan will be filed shortly, and all delinquent payments will be paid by Debtor prior to the hearing on Trustee's motion to dismiss. Doc. #167. However, this declaration was not timely filed 14 days before the hearing.

On December 12, 2022, Debtor filed the *Fifth Modified Chapter 13 Plan*. Doc. #173. It was set for hearing on January 25, 2023 and is the subject of matter #19 above (HDN-3).

On December 15, 2022, Debtor filed supplemental declarations and exhibits. Docs. ##180-81.



This motion was continued to January 25, 2023 to be heard in connection with the motion to confirm plan. Doc. #201.

Post-continuance, Debtor filed a response on January 17, 2023. Doc. #228. Debtor claims that the December 25, 2022 plan payment was paid on January 13, 2023. *Id.* Debtor requests continuance of the dismissal motion until after the Madera Superior Court determines what amount, if any, of the fees are due to the State Court Receiver.

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 would be "cause" for dismissal under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay and failure to make all payments due under the plan.

The record shows that there has been unreasonable delay by Debtor that is prejudicial to creditors because Debtor failed to make all payments due under the proposed plan.

Trustee has reviewed the schedules and determined that this case has a liquidation value of \$4,020.00 after trustee compensation. This amount consists of the value of Debtor's cash on hand and the funds in his bank account at the time of filing, and various second-hand personal items. Doc. #155. Since this amount will *de minimis* after chapter 7 trustee expenses, dismissal, rather than conversion, serves the interests of creditors and the estate.

As noted above, Debtor indicates that the December 25, 2022 plan payment has been paid. Doc. #228. This matter will be called and proceed as scheduled to inquire whether Debtor is current under the proposed chapter 13 plan. If Debtor has cured the delinquency, this motion may be DENIED WITHOUT PREJUDICE. If not, this motion may be GRANTED, and the case dismissed.

11:00 AM

1. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[20-1035](#)     [FW-6](#)

FURTHER SCHEDULING CONFERENCE RE: MOTION FOR SUMMARY  
ADJUDICATION  
9-14-2021     [[138](#)]

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

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

DISPOSITION:     Continued to March 1, 2023 at 11:00 a.m.

ORDER:     The court will issue an order.

The court is in receipt of *Plaintiff's Status Report* dated January 18, 2023. Doc. #407. Armando Natera ("Plaintiff") indicates receipt of settlement offers from several defendants prior to the holidays. *Id.* In light of this, in the interests of judicial economy, and to relieve the court's docket, Plaintiff and the Ward Defendants will be stipulating to dismiss their respective motions for summary adjudication (FW-6; TAT-3) without prejudice. *Id.* As of this writing, no stipulation has been filed.

Accordingly, this scheduling conference will be CONTINUED to March 1, 2023 to await the stipulated dismissal of their motions for summary adjudication. If the stipulated dismissals have not been filed at the time of the continued hearing, the parties shall file joint or unilateral status conference statements not later than February 22, 2023.

2. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[20-1035](#)     [TAT-3](#)

CONTINUED STATUS CONFERENCE RE: MOTION FOR SUMMARY JUDGMENT  
9-1-2021     [[124](#)]

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

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

DISPOSITION:     Continued to March 1, 2023 at 11:00 a.m.

ORDER:     The court will issue an order.

The court is in receipt of *Movants' Status Report* dated January 18, 2023. Doc. #407. Roger L. Ward and Sandra S. Ward (collectively the "Wards") indicate their intent to enter into a stipulation with Armando Natera ("Plaintiff") for (1) withdrawal of the Wards' motion for summary judgment (TAT-3) without prejudice to the Wards' right to file a new motion for summary judgment, and (2) withdrawal of Plaintiff's motion for summary adjudication (FW-6) without prejudice to Plaintiff's right to file a new motion. *Id.* The Wards anticipate tha the stipulation will be filed before the continued status conference in this matter. *Id.* As of this writing, no stipulation has been filed.

Accordingly, this scheduling conference will be CONTINUED to March 1, 2023 to await the stipulated dismissal of their motions for summary judgment and/or adjudication. If the stipulated dismissals have not been filed at the time of the continued hearing, the parties shall file joint or unilateral status conference statements not later than February 22, 2023.

3. [22-11149](#)-B-7     **IN RE: PAULO VILLAREAL-SALINAS**  
[22-1024](#)     [CAE-1](#)

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

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

NO RULING.

The court is in receipt of debtor Paulo Villareal-Salinas' ("Defendant") Answer filed on January 5, 2023. Doc. #17.

This status conference will be called and proceed as scheduled. The parties shall be prepared to set upcoming dates and deadlines for disclosures, discovery, dispositive motions, and a pre-trial conference. The court intends to issue a scheduling order.

4. [22-10982](#)-B-7    **IN RE: RENE/ADELA GARCIA**  
[22-1020](#)    [CAE-1](#)

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

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

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

NO RULING.

The court is in receipt of *Plaintiffs' Status Conference Statement* filed by Agro Labor Services, Inc., and Cal Central Harvesting, Inc. (collectively "Plaintiffs") on January 18, 2023. Doc. #18.

On January 23, 2023, joint debtor Adela Garcia ("Defendant") filed an Answer to Plaintiffs' Complaint. Doc. #20.

This status conference will be called and proceed as scheduled. The parties shall be prepared to set upcoming dates and deadlines for disclosures, discovery, dispositive motions, and a pre-trial conference. The court intends to issue a scheduling order.