



**UNITED STATES BANKRUPTCY COURTf11**  
**Eastern District of California**  
**Honorable René Lastreto II**  
**Wednesday, February 15, 2023**  
**Department B – Courtroom #13**  
**Fresno, California**

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered. Parties in interest and members of the public may connect to ZoomGov, free of charge, using the information provided:

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. You are required to give the court 24 hours advance notice. Review the court's [Zoom Policies and Procedures](#) for these and additional instructions.
3. Parties appearing through CourtCall are encouraged to review the [CourtCall Appearance Information](#).

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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. [22-12101](#)-B-13      **IN RE: ANGEL ARELLANO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-17-2023    [[18](#)]

SCOTT LYONS/ATTY. FOR DBT.  
\$79.00 INSTALLMENT PAYMENT MADE ON 1/17/23

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 \$79.00 installment filing fee was paid on January 17, 2023. Accordingly, the order to show cause will be VACATED.

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.

2. [22-12101](#)-B-13      **IN RE: ANGEL ARELLANO**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
1-31-2023    [[20](#)]

SCOTT LYONS/ATTY. FOR DBT.

NO RULING.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of *Chapter 13 Plan* filed on December 23, 2022 by Angel Arellano ("Debtor"). Doc. #20. Trustee objects because the plan fails to comply with other applicable provisions of Title 11 as required by 11 U.S.C. § 1325(a)(1). However, Trustee has not yet concluded the meeting of creditors and cannot narrow the issues or recommend confirmation until complete and accurate schedules, plan, and statements have been filed. The continued meeting of creditors is scheduled for February 14, 2023 at 1:00 p.m. and Trustee reserves the right to supplement this objection when Trustee obtains further information.

Though not required, Debtor filed written opposition and amended schedules. Docs. #24; #26. Debtor claims that true and correct copies of Debtors' declarations and proof of income are attached as exhibits and were uploaded to [www.13documents.com](http://www.13documents.com) on January 30, 2023. *Id.* On this basis, Debtors ask that the objection to confirmation be overruled.

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 Debtor. 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.

3. [21-12008](#)-B-13     **IN RE: CELESTE MURILLO**  
[JNV-6](#)

MOTION TO MODIFY PLAN  
12-29-2022    [\[83\]](#)

CELESTE MURILLO/MV  
JASON VOGELPOHL/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

Celeste Lucia Murillo ("Debtor") seeks confirmation of the *Fifth Modified Chapter 13 Plan* dated December 29, 2022 ("Proposed Plan"). Doc. #83. The Proposed Plan proposes that Debtor shall make payments of \$899.00/month for 1 month, \$1,357.00/month for 1 month, \$1,509.00/month for 9 months, and \$156.00/month for 49 months with a 0% dividend to allowed, non-priority unsecured claims. Doc. #87. Debtor's *Amended Schedules I & J* dated September 1, 2022 indicate that Debtor receives \$156.18 in monthly net income. Doc. #69.

In contrast, the *Third Amended Plan* filed December 20, 2021, confirmed June 10, 2022 ("Confirmed Plan"), required Debtor to make monthly payments of \$899.00/month for 1 month, \$1,357.00/month for 1 month, and \$1,509.00/month for 58 months with a 100% dividend to allowed, non-priority unsecured claims. Docs. #35; #57.

This case has been pending for 1.5 years and five Modified Plans have been presented to the court. One has been confirmed, the Third Modified Plan. This Fifth Modified Plan substantially changes the currently operative Plan by reducing the distribution to unsecured creditors to zero from 100% and surrendering a vehicle to a lender.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation because Debtor has provided no explanation for the reduction in plan payment and no evidence that Debtor separated from

her spouse or experienced a change in household size, income, or expenses. Doc. #95. Trustee claims the Proposed Plan (1) reduces the monthly payment from \$1,509.00 to \$156.00, (2) reduces the percentage to unsecured creditors from 100% to 0%, (3) proposes to surrender collateral to Bay Federal Credit Union, removing it from Class 2 and providing for treatment under Class 3, and (4) does not satisfy the liquidation requirement of \$1,453.04. *Id.*

In reply, Debtor filed a supplemental memorandum of points and authorities arguing that this case was filed in good faith. Doc. #97.

As an informative matter, Debtor's Attachment 6B2 to the certificate of service does not appear to be an official matrix from the Clerk of the Court as required by LBR 7005-1. Docs. #90. Unless six or fewer parties are served, LBR 7005-1 requires the movant to attach the Clerk's official matrices containing the names and addresses of all parties served. The Clerk's matrices are available on the court's website or through PACER, shall be downloaded not more than seven days prior to the date of serving the pleadings or other documents, and shall reflect the date of download. LBR 7005-1(d).<sup>1</sup>

Here, the "Attachment 6B2" does not appear to be an official version of the Clerk's Attachment 6B2. *Id.* at 5-8. It is not formatted like one of the Clerk's matrices, does not contain date and time stamps, and appears to be a replication of the official matrix. Since the court did not begin enforcement of LBR 7005-1 for motions filed before January 2023, the court will overlook this procedural deficiency in this instance. Counsel is advised to review the local rules and ensure procedural compliance in future matters.

Debtor claims that the Fifth Modified Plan is filed in good faith. Her attorney concurs. Debtor has the burden to prove good faith and the other elements needed for confirmation. There is an absence of proof for the change in expenses offered by Debtor. Though her declaration says she has been separated from her spouse since June 1, 2022, there is no proof of a pending dissolution proceeding, potential for receipt of spousal support, or any other potential income source.

This motion will be heard to determine the remaining evidentiary issues. The court may CONTINUE the hearing to March 15, 2023 at 9:30 a.m. If continued, the Debtor shall file and serve a written response not later than March 1, 2023 unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of Debtor's position. Trustee shall file and serve a reply, if any, by March 8, 2023.

If Debtor elects to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than March 8, 2023. If

the Debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the objection without a further hearing.

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<sup>1</sup> See Official Certificate of Service Form Information on the court's website, <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited Feb. 13, 2023).

4. [21-12008](#)-B-13     **IN RE: CELESTE MURILLO**  
[MHM-1](#)

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

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

NO RULING.

This motion was originally heard on January 25, 2023. Doc. #91.

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)(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. This motion was continued to February 15, 2023 to be heard in connection with the debtor's motion to confirm plan in matter #3 above. JNV-6.

This matter will be called as scheduled to 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 a date and time determined at the hearing while plan confirmation remains pending.

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 declared that Debtor has failed to make all required payments due under the Confirmed Plan. Doc. #80. As of December 23, 2022, payments were 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 is set for confirmation in matter #3 above. 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, this motion may be CONTINUED to a date and time determined at the hearing while plan confirmation remains pending.

5. [22-12012](#)-B-13     **IN RE: REYNALDO RODRIGUEZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
1-17-2023    [\[35\]](#)

MICHAEL MEYER/MV

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

ORDER:                        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) for unreasonable delay by the debtor that is prejudicial to creditors by failing to appear at the scheduled 341 meeting of creditors, failing to provide required documents, tax returns, payment advices, creditor counseling certificate, and other documents to the Trustee, and failing to file complete and accurate schedules, statements, and a plan. Doc. #35. Reynaldo G. Rodriguez ("Debtor") did not oppose.

Since Debtor is *pro se*, this matter will be called and proceed as scheduled. Unless Trustee's motion is withdrawn before the hearing, the 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 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).

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors [11 U.S.C. § 1307(c)(1)]. Debtor failed to file complete and accurate schedules, statement of financial affairs, and a plan [11 U.S.C. § 521], failed to provide required documentation to the trustee including a Class 1 checklist with most recent mortgage statement [LBR 3015-1(b)(6)], authorization to release information [LBR 3015-1(b)(6)], domestic support obligation checklist [LBR 3015-1(b)(6)], failed to appear at the 341 meeting of creditors, failed to file all tax returns [11 U.S.C. §§ 521(e)(2)(A)(B), 1308(a)], failed to provide proof of income for the last 6 months [11 U.S.C. § 521(a)(1)(B)(iv) & (i)(1), and LBR 1007-1(c)(1)], failed to complete Form 122C-2, and failed to provide a copy of Debtor's original valid picture ID and proof of complete social security card. Docs. #35; #37. Additionally, Debtor has failed to provide a credit counseling certificate, so Trustee contends that Debtor is ineligible to be a debtor in a chapter 13.

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 that is prejudicial to creditors.

Since Debtor has not filed a credit counseling certificate and is ineligible to be a debtor, conversion to chapter 7 is inapplicable. Therefore, dismissal, rather than conversion, better serves the interests of creditors and the estate.

This matter will be called and proceed as scheduled because Debtor is *pro se*. The court intends to GRANT this motion and dismiss the case.



6. [22-12012](#)-B-13     **IN RE: REYNALDO RODRIGUEZ**  
[MV-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK  
1-31-2023    [\[46\]](#)

ALLY BANK/MV  
MICHAEL VANLOCHEM/ATTY. FOR MV.

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.

Ally Bank ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed on December 5, 2022 by Reynaldo G. Rodriguez ("Debtor") pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and an order sustaining Creditor's prior objection without prejudice to refiling the objection within seven days. Docs. #46; #51; #56.

Creditor is the holder of a claim secured by a 2015 Chrysler 300 ("Vehicle"), which is listed in Class 2(C) with monthly payments of \$0.00/month. Doc. #14. Creditor objects because the proposed plan understates the value of Creditor's claim and should not be crammed down because the Vehicle was financed by Creditor less than 910 days before the bankruptcy was filed. Doc. #46. Additionally, Creditor contends that the chapter 13 plan was not filed in good faith because it proposes to reduce the value of the Vehicle to \$0.00 even though it has a fair market value of \$14,984.00. *Id.*

This objection will be called as scheduled. The court intends to dismiss this case in matter #5 above. MHM-1. This objection will be OVERRULED AS MOOT and dropped from calendar if the case is dismissed. If not dismissed, this objection may be continued.

7. [22-11818](#)-B-13      **IN RE: ARNOLDO OLAGUE**

MOTION TO CONFIRM PLAN  
1-13-2023    [\[38\]](#)

ARNOLDO OLAGUE/MV  
VINCENT QUIGG/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:      Denied without prejudice.

ORDER:              The court will issue an order.

Arnoldo Olague ("Debtor") seeks confirmation of the *Chapter 13 Plan* dated January 13, 2023. Doc. #38.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation under 11 U.S.C. §§ 1322(b), (b)(2), and 1325(a)(6) because (i) the plan unfairly discriminates between a class or classes of unsecured claims; (ii) the plan impermissibly modifies the claim of a creditor secured only by a security interest in real property that is Debtor's principal residence; and (iii) the Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #47.

Notwithstanding Trustee's substantive objections, this motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, the motion did not contain a Docket Control Number. 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 plan was not set for hearing on at least 35 days' notice. LBR 3015-1(d)(1) requires any plan set for a confirmation hearing to comply with Fed. R. Bankr. P. ("Rule") 2002(a)(9), which requires at least 21 days' notice of the deadline to file an objection to confirmation, as well as 9014-1(f)(1). To comply with both Rule 2002(a)(9) and LBR 9014-1(f)(1), parties in interest shall be served at least 35 days prior to the hearing.

This motion was filed and served on January 13, 2023 and set for hearing on February 15, 2023. Docs. ##38-42. January 13, 2023 is 33 days before February 15, 2023, and therefore this hearing was not set on least 35 days' notice as required by LBR 3015-1(d)(1).

Third, LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users using the *Official Certificate of Service Form*, EDC 007-005. Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of downloaded.<sup>2</sup> LBR 7005-1(d).

Here, Debtor used the correct EDC Form 007-005. Doc. #41. However, Debtor did not include an attached Clerk's official matrix of creditors downloaded from the court website or from PACER within seven days of serving the documents even though more than six parties were served.

For the above procedural reasons, this motion will be DENIED WITHOUT PREJUDICE. Debtor's next motion should attempt to resolve Trustee's objections.

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<sup>2</sup> See Official Certificate of Service Form Information on the court's website, <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited Feb. 13, 2023).

8. [21-12324](#)-B-13     **IN RE: JOSE HERRERA**  
[MHM-1](#)

MOTION TO DISMISS CASE  
1-18-2023    [\[39\]](#)

MICHAEL MEYER/MV  
RICHARD STURDEVANT/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will be called as scheduled.

DISPOSITION:                Granted or denied without prejudice.

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 under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay by the debtor that is prejudicial to creditors and failure to make all payments due under the plan. Doc. #39. As of January 18, 2023, Debtor has failed to make all payments due under the plan and Debtor is delinquent \$4,075.96. Doc. #41. Before the hearing on this motion, an additional payment of \$2,066.49 will become due on January 25, 2023 for a total of \$6,142.45 due before the hearing.

Jose Gonzalez Herrera ("Debtor") timely filed written opposition. Doc. #43. Debtor will initiate a payment on February 2, 2023 in the amount of \$6,142.45 via cashier's check, which should resolve the delinquency. *Id.* Additionally, Debtor will file a supplemental declaration prior to the hearing to provide evidence that the payment was made. *Id.*

This matter will be called as scheduled to inquire whether Debtor has cured the delinquency. If so, this motion may be DENIED WITHOUT PREJUDICE. Otherwise, the motion may be GRANTED, and the case dismissed.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. 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 that is prejudicial to creditors and failure to make all payments due under the plan.

Trustee has reviewed the schedules and determined that this case has a liquidation value of \$4,217.50 after trustee compensation. Doc. #41. This value consists of the non-exempt equity in Debtor's Chevrolet Tahoe. Since a *de minimis* amount of proceeds could be realized for the benefit of unsecured claims, dismissal, rather than conversion, better serves the interests of creditors and the estate.

As noted above, Debtor intends to make a payment of \$6,142.45 on February 2, 2023 to cure the delinquency. This matter will be called as scheduled to inquire whether Debtor has cured the delinquency. If so, this motion may be DENIED WITHOUT PREJUDICE. Otherwise, the motion may be GRANTED, and the case dismissed.

9. [22-11935](#)-B-13     **IN RE: SUSAN QUINVILLE AND LOARINA DOMENA-QUINVILLE**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
1-27-2023     [\[20\]](#)

BENNY BARCO/ATTY. FOR DBT.

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                     Sustained.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of *Chapter 13 Plan* filed on November 28, 2022 by Susan Marie Quinville and Loarina Victoria Domena-Quinville (collectively "Debtors"). Doc. #20. Trustee objects under 11 U.S.C. § 1325(a)(6) and (a)(9) because Debtors will not be able to make all payments under the plan and comply with the plan and Debtors have not filed all applicable tax returns. Specifically, as of January 27, 2023, Debtors had not made the January 25 payment and Debtors have not filed the 2018 California State Tax return, nor the 2012, 2013, or 2017 California State Tax returns. *Id.*

Debtors filed non-opposition on February 10, 2023. Doc. #37.

This objection will be called and proceed as scheduled. The court is inclined to SUSTAIN the objection.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtors do not oppose Trustee's objection to plan confirmation. Doc. #37. Accordingly, Trustee's objection to confirmation will be SUSTAINED because Debtors will not be able to make all payments under the plan and comply with the plan, and Debtors have not filed applicable tax returns.

The court reminds Debtors that failure to file applicable tax returns is a ground for dismissal under § 1307(e).

10. [19-11740](#)-B-13     **IN RE: RICHARD/VERONICA ESPINOZA**  
[MHM-4](#)

MOTION TO DISMISS CASE  
1-18-2023    [\[83\]](#)

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

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

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 February 14, 2023. Doc. #87. Accordingly, this motion will be dropped and taken off calendar pursuant to the withdrawal.

11. [19-15245](#)-B-13     **IN RE: RITA AGCAOILI**  
[MMJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-19-2023    [\[35\]](#)

CAPITAL ONE AUTO FINANCE/MV  
PATRICK KAVANAGH/ATTY. FOR DBT.  
MARJORIE JOHNSON/ATTY. FOR MV.

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

Capital One Auto Finance ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to 2018 Toyota Corolla L Sedan 4D ("Vehicle. Doc. #35. Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3).

One day after this motion was filed, Movant advanced the hearing from February 28 to February 15, 2023. Docs. #36; #46. Movant filed a second amended notice on February 10, 2023. Doc. #61.

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

First, chapter 13 trustee Michael H. Meyer ("Trustee") was not properly served by mail with the motion, supporting documents, and first amended notice of hearing. Rule 4001(a)(1) requires motions for relief from the automatic stay to be made in accordance with Rule 9014. Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. Since this motion will affect property of the estate, the Chapter 7 Trustee must be served in accordance with Rule 7004.

Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business[.]" Rule 7004(b)(1). Electronic service is precluded here because Rule 9036 "does not apply to any paper required to be served in accordance with Rule 7004." Rule 9036(e).

The certificates of service say that parties were served by "United States mail, postage prepaid or by efilng/email." Docs. #40; #43. "Attachment 5 '6B(1)' and '6B(2)'" to the certificates of service state that only the Debtor was served via United States mail, while Trustee was served electronically with no email address listed. Additionally, the email address for the U.S. Trustee is not listed. *Id.* Debtor's attorney, Patrick Kavanagh, was served by email in compliance with Local Rule of Practice 7005-1, but this is permissible

under Rule 7004(g). The court notes that the second amended notice of hearing was properly served on Trustee, but the certificate of service did not use the Clerk's official matrix of creditors. Doc. #62.

Second, LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users using the Official Certificate of Service Form, EDC 007-005. Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of downloaded.<sup>3</sup> LBR 7005-1(d).

Movant used the Official Certificates of Service but did not include an Official Matrix from the Clerk of the Court for ECF Registered Users and Requests for Special Notice.

Third, for motions filed on less than 28 days' notice, LBR 9014-1(f)(2)(C) requires the movant to notify respondents written opposition is not required and any opposition to the motion must be presented at the hearing.

The motion was filed and served on January 19, 2023 and set for hearing on February 15. Docs. ##35-40. January 19, 2023 is twenty-seven (27) days before February 15, 2023. Therefore, this motion was set for hearing on less than 28 days' notice under LBR 9014-1(f)(2). Nevertheless, the notice stated:

**OPPOSITION**, if any, to the granting of the motion, shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing.

Notices at 1:24, 2:1-2, Docs. #36, #42. This is incorrect. Motions noticed less than 28 days before the hearing are deemed brought pursuant to LBR 9014-1(f)(2). The notice should have informed respondents that written opposition was not required, and opposition, if any, shall be presented at the hearing. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs. Therefore, the notice was materially deficient because the respondents were told to file and serve written opposition even though it was not necessary. Thus, interested parties may be deterred from opposing at the motion, or from even appearing at the hearing.



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

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<sup>3</sup> See Official Certificate of Service Form Information on the court's website, <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited Feb. 10, 2023).

12. [17-14157](#)-B-13     **IN RE: VICTOR ISLAS AND LORENA GONZALEZ**  
[MHM-3](#)

MOTION TO DISMISS CASE  
1-13-2023    [\[236\]](#)

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

TENTATIVE RULING:        This matter will be called as scheduled.

DISPOSITION:                Granted or denied without prejudice.

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 under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay by the debtors that is prejudicial to creditors and failure to make all payments due under the plan. Doc. #236.

Victor Islas and Lorena Gonzalez ("Debtors") timely filed written opposition. Docs. #240, #242. Debtors intend to be fully current with the amounts received by the Trustee prior to the hearing on this motion.

This matter will be called as scheduled to inquire whether Debtors have cured the delinquency. If so, this motion may be DENIED WITHOUT PREJUDICE. Otherwise, the motion may be GRANTED, and the case dismissed.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. 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).

This case was previously dismissed on October 21, 2022. Doc #224. However, the court vacated the dismissal on November 17, 2022. Doc #233.

As of January 13, 2023, Debtors have failed to make all payments due under the plan and Debtors are delinquent \$1,690.62. Doc. #238. Before the hearing on this motion, an additional payment of \$1,690.62 will become due on January 25, 2023 for a total of \$3,381.24 due before the hearing.

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 that is prejudicial to creditors and failure to make all payments due under the plan.

Trustee has reviewed the schedules and determined that Debtors' significant assets—vehicles and real property—are over encumbered or exempted. Doc. #236. Since there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion, best serves the interests of creditors and the estate.

As noted above, Debtors intend to cure the delinquency prior to the hearing on this motion. This matter will be called as scheduled to inquire whether Debtors have cured the delinquency. If so, this motion may be DENIED WITHOUT PREJUDICE. Otherwise, the motion may be GRANTED, and the case dismissed.

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

CONTINUED MOTION TO DISMISS CASE  
11-23-2022    [\[36\]](#)

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

NO RULING.

This motion was originally heard on January 11, 2023. Doc. #45.

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

Matthew Lee Crippen ("Debtor") opposed. Doc. #42. Debtor thought that this case was dismissed, so he filed a *pro se* chapter 13 case on November 2, 2022. Case No. 22-11875. After discussing with counsel, Debtor believed the delinquency in this case could be cured by filing a modified plan to bring the case current.

The court continued the hearing on this motion to February 15, 2023 to be heard in connection with Debtor's motion to modify plan, which is the subject of matter #14 below. TCS-1. Trustee has objected to confirmation because as of January 27, 2023, Trustee had not received the payment due January 25, 2023. Doc. #56.

This matter will be called as scheduled to inquire whether Debtor is current under the proposed modified plan.

14. [22-10760](#)-B-13      **IN RE: MATTHEW CRIPPEN**  
[TCS-1](#)

MOTION TO MODIFY PLAN  
1-10-2023    [\[46\]](#)

MATTHEW CRIPPEN/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted or continued.

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

Matthew Lee Crippen ("Debtor") seeks confirmation of the *First Modified Chapter 13 Plan* dated January 10, 2023 ("Proposed Plan"). Doc. #46. The Proposed Plan provides for Debtor's aggregate payment for months 1-7 to be \$5,380.00, and starting in month 8, the monthly plan payment will be \$3,058.00 through month 60 with a 100% dividend to allowed, non-priority unsecured claims. Doc. #51. Debtor's *Amended Schedules I & J* indicate that Debtor receives \$3,058.00 in monthly net income, which appears to be sufficient to fund the Proposed Plan.

In contrast, the operative *Chapter 13 Plan* dated May 3, 2022 and confirmed August 12, 2022 ("Confirmed Plan") provides that Debtor will make 60 monthly payments of \$2,660.00 per month with a 100% dividend to allowed, non-priority unsecured claims. Docs. #3; #30.

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

Doc. #56. As of January 27, 2023, Trustee has not received the payment due for January 25, 2023. *Id.* The monthly payment is also short \$53.34 per month, but Trustee says this can be remedied if Debtor's attorney agrees to reduce the monthly attorney fee dividend to \$250.00 per month.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2) and will proceed as scheduled. 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).

This matter will be called as scheduled to inquire whether Debtor has paid the January 2023 plan payment, and whether Debtor's attorney consents to a reduction of the monthly attorney fee dividend. This motion may be GRANTED provided that Trustee's objection is resolved.

If granted, any confirmation order shall include the docket control number of the motion and shall reference the plan by the date it was filed.

15. [22-12169](#)-B-13      **IN RE: ANDREW MURRIETA**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
1-12-2023    [9]

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

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

DISPOSITION:      Sustained in part; overruled as moot in part.

ORDER:              The objecting party shall submit a proposed order in conformance with the ruling below.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Andrew Jose Murrieta's ("Debtor") claims of exemptions under Cal. Code Civ. Proc. ("CCP") § 704.110 in the following assets: (i) cash in the amount of \$100.00, (ii) a Wells Fargo checking account in the amount of \$700.00, (iii) a Merced Credit Union Savings Account in the amount of \$350.00, and (iv) a tax refund in the amount of \$1,300.00. Doc. #9. Additionally, Trustee objects because Debtor exempted a \$15,000.00

settlement for a personal injury claim under CCP § 704.140 but has not demonstrated that the personal injury award is necessary for his support. *Id.*

Debtor timely concurred. Doc. #16. Debtor believes that the exemptions were correctly listed, but he does not believe that it is necessary to determine the issues raised in Trustee's objection, so he is filing amended schedules to resolve Trustee's objection. *Id.* Debtor subsequently filed an *Amended Schedules A/B & C* on February 4, 2023. Doc. #18.

This objection will be called and proceed as scheduled.

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 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 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 Debtor 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).

CCP § 704.110(d) allows a debtor to exempt "[a]ll amounts received by any person, a resident of the state, as a public retirement benefit or as a return of contributions and interest thereon from the United States or a public entity or from a public retirement system . . ."

CCP § 704.140 allows a debtor to exempt "an award of damages or a settlement arising out of personal injury . . . to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor."

The Eastern District of California Bankruptcy Court in *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015), held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies."

First, Trustee contends that Debtor has failed to meet his burden that the \$100.00 cash, \$700.00 Wells Fargo Checking Account, \$500.00 Chase Checking Account, and \$350.00 Merced Credit Union Savings Account can all be traced back to funds received by Debtor from public retirement benefits. Doc. #9. According to Debtor's *Schedule I*, Debtor receives \$1,350.00 from rental income, \$1,441.00 from social security, and \$1,388.00 from a pension or retirement account, so Debtor is required to demonstrate that the cash and balances in the accounts derive from public retirement benefits. Doc. #1.

Second, Trustee contends that the 2022 Tax Refund in the amount of \$1,300.00 is not a public retirement benefit, so it is not exempt in any amount under CCP § 704.110.

Lastly, Trustee argues that Debtor's \$15,000.00 personal injury settlement cannot be exempted under CCP § 704.140 unless it is necessary for the support of Debtor, Debtor's spouse, or Debtor's dependents.

In response, Debtor concurred and filed an *Amended Schedule C*. Docs. #16; #18. The amendment contains the same exemptions under CCP § 704.110: \$100.00 cash, \$700.00 Wells Fargo Checking Account, \$500.00 Chase Checking Account, \$350.00 Merced Credit Union, and \$1,300.00 2022 Tax Refund. Doc. #18. However, Debtor has reduced the exemption in the personal injury claim from \$15,000.00 to \$0.00 under CCP § 704.140.

Since Debtor has concurred, he is not disputing Trustee's objection to the exemptions claimed under CCP § 704.110, but the objection to the personal injury claim is moot.

Accordingly, this objection will be SUSTAINED IN PART with respect to the objection to the claims of exemption under CCP § 704.110, and OVERRULED AS MOOT IN PART with respect to the personal injury claim exemption under CCP § 704.140.

16. [22-11972](#)-B-13      **IN RE: DAX TURNER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-23-2023    [\[24\]](#)

SCOTT LYONS/ATTY. FOR DBT.  
CASE DISMISSED 1/27/23

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

DISPOSITION:      Dropped as moot.

NO ORDER REQUIRED.

The court entered an order dismissing this case on January 27, 2023. Doc. #27. Accordingly, this order to show cause will be dropped and taken off calendar as moot.

17. [17-14775](#)-B-13     **IN RE: TIM LOWMEXAY**  
[MHM-1](#)

MOTION TO DISMISS CASE  
1-13-2023    [\[36\]](#)

MICHAEL MEYER/MV  
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION:     Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this motion on February 9, 2023. Doc. #50. Accordingly, this motion will be dropped and taken off calendar pursuant to the withdrawal.

18. [22-11476](#)-B-13     **IN RE: JORGE ESPINO AND HEIDI GUTIERREZ**  
[SL-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCOTT LYONS  
DEBTORS ATTORNEY(S)  
1-4-2023    [\[28\]](#)

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.

Scott Lyons ("Applicant"), attorney for Jorge Santiago Espino and Heidi Gutierrez (collectively "Debtors"), seeks compensation in the sum of \$6,209.90 on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Doc. #28. This amount consists of \$5,736.50 in fees as reasonable compensation for services rendered and of \$473.40 in reimbursement for actual, necessary expenses from April 18, 2022 through January 3, 2023. *Id.*

Debtors executed a statement dated January 3, 2023 indicating that they have reviewed the fee application and have no objection to payment of the proposed compensation. *Id.* ¶ 9(7).

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) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). 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.

Debtors filed chapter 13 bankruptcy on August 26, 2022. Doc. #1. The *Chapter 13 Plan* dated August 26, 2022 and confirmed October 14, 2022 ("Plan") is the operative plan in this case. Docs. #3; #25. Section 3.05 of the Plan provides that Debtors paid Applicant \$1,500.00 prior to the filing of the case, and subject to court approval, Applicant will be paid \$12,000.00 through the Plan by filing and serving a motion in conformance with 11 U.S.C. §§ 329 & 330, and Rules 2002, 2016, & 2017. Doc. #3. The *Disclosure of Compensation Form B2030* indicates Applicant was paid \$1,500.00 pre-petition and the \$313.00 filing fee has been paid. Doc. #1. The same is reiterated in Applicant's narrative summary: Applicant received a total of \$1,813.00 pre-petition.

This is Applicant's first interim fee application. Applicant's firm provided 27.85 billable hours of legal services at the following rates, totaling **\$5,736.50** in fees:

Professional	Rate	Hours	Fees
Scott Lyons	\$400	2.84	\$1,136.00
Louis Lyons	\$350	8.77	\$3,069.50
Louis Lyons (no charge)	\$0	0.50	\$0.00
Sylvia Gutierrez	\$100	15.31	\$1,531.00
Sylvia Gutierrez (no charge)	\$0	0.43	\$0.00
<b>Total Hours &amp; Fees</b>		<b>27.85</b>	<b>\$5,736.50</b>

Doc. #28; *Ex. B*, Doc. #30. Applicant also incurred **\$473.40** in expenses:



Postage	\$14.40
Reproduction & Stationery	+ \$72.00
Filing fees	+ \$313.00
Credit Reports & CourtCall	+ \$74.00
<b>Total Costs</b>	<b>= \$473.40</b>

*Id.* These combined fees and expenses total **\$6,209.90**. After application of the \$1,813.00 pre-petition payment, a total of \$4,396.90 would remain to be paid through the plan.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services here included, without limitation: (1) consulting and fact gathering pre-petition, (2) preparing petition, schedules, and statements, (3) independently verifying information, (4) preparing, filing, and prosecuting a motion to extend the automatic stay (SL-1) (5) confirming the original Plan, (6) reviewing proofs of claim and administering the case, and (7) preparing and filing this fee application (SL-2). Docs. #28; #30. The court finds these services and expenses actual, reasonable, and necessary. No party in interest timely filed written opposition and Debtors have consented to payment of the proposed fees and expenses. Doc. #28.

Accordingly, this motion will be GRANTED. Applicant shall be awarded \$5,736.50 in fees and \$473.40 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review under § 330. After application of the \$1,813.00 pre-petition payment, the chapter 13 trustee, in the trustee's discretion, will be authorized to pay Applicant \$4,396.90 for services rendered to and expenses incurred from April 18, 2022 through January 3, 2023 in accordance with the Plan.

19. [22-11679](#)-B-13     **IN RE: DELANO/MONICA WILLIAMS**  
[AVN-3](#)

MOTION TO CONFIRM PLAN  
12-23-2022    [\[37\]](#)

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

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

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

Delano Jamere Williams and Monica Marlene Williams (collectively "Debtors") seek confirmation of the *Second Amended Chapter 13 Plan* dated December 23, 2022. Doc. #37.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because Debtors will not be able to make all payments under the plan and comply with the plan. Doc. #59.

On February 8, 2023, Debtors withdrew their opposition to Trustee's motion to dismiss, which is the subject of matter #23 below. MHM-1; Doc. #62. Debtors' income has significantly been reduced recently, so this plan is no longer feasible. *Id.* Since Trustee's motion is unopposed, the court intends to grant that motion and dismiss the case.

Accordingly, this motion to confirm plan will be DENIED AS MOOT because the case will be dismissed in matter #23 below.

20. [22-11679](#)-B-13     **IN RE: DELANO/MONICA WILLIAMS**  
[AVN-4](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.  
1-25-2023    [\[52\]](#)

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

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

DISPOSITION:     Denied as moot.

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. #52.

On February 8, 2023, Debtors withdrew their opposition to Trustee's motion to dismiss, which is the subject of matter #23 below. MHM-1; Doc. #62. Debtors' income has significantly been reduced recently, so this plan is no longer feasible. *Id.* Since Trustee's motion is unopposed, the court intends to grant that motion and dismiss the case.

Accordingly, this motion to value collateral will be DENIED AS MOOT because the case will be dismissed in matter #23 below.

As an informative matter, the notice of hearing and certificate of service do not comply with the Local Rules of Practice ("LBR").<sup>4</sup>

First, the notice of hearing does not refer respondents to the pre-hearing dispositions on the court's website. LBR 9014-1(d)(3)(B)(iii) requires the movant 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.

Second, the certificate of service does not comply with LBR 7005-1, which is effective as of November 1, 2022 under General Order 22-04. Gen. Order 22-04 (Oct. 6, 2022). Though Applicant used the correct official form EDC 007-005, it does not include an official matrix from the Clerk of the Court. LBR 7005-1 requires the movant to attach the Clerk's official matrices containing the names and addresses of all parties served. The Clerk's matrices are available on the court's website and through PACER, shall be downloaded not more than seven days prior to the date of serving the pleadings or other documents served, and shall reflect the date of download.<sup>5</sup> LBR 7005-1(d).

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<sup>4</sup> See LBR, United States Bankruptcy Court, Eastern District of California, <https://www.caeb.uscourts.gov/documents/Forms/LocalRules/LocalRulesFeb2023.pdf> (eff. Feb. 2023).

<sup>5</sup> See Official Certificate of Service Form Information on the court's website, <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited Feb. 10, 2023).

21. [22-12086](#)-B-13     **IN RE: HILDA CAMPOS**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
1-30-2023    [\[18\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:        Overruled as moot.

ORDER:                The court will issue an order.

The court entered an order dismissing this case on February 2, 2023.  
Doc. #27. Accordingly, the trustee's objection to confirmation will be  
OVERRULED AS MOOT.

22. [22-11818](#)-B-13     **IN RE: ARNOLDO OLAGUE**  
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE  
1-5-2023    [\[31\]](#)

MICHAEL MEYER/MV  
VINCENT QUIGG/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:        Conditionally denied.

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

This motion was originally heard on February 8, 2023. Doc. #50.

Chapter 13 trustee Michael H. Meyer ("Trustee") moved to dismiss this  
case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by  
the debtor that is prejudicial to creditors and failure to confirm a  
chapter 13 plan. Doc. #31.

Arnoldo Olague ("Debtor") opposed dismissal on the basis that he filed  
a motion to confirm the *Second Amended Chapter 13 Plan* dated January  
13, 2023, which is set for hearing on February 15, 2023 and is the  
subject of matter #7 above. Doc. #43.

The court continued the hearing on this motion to be heard in  
connection with Debtor's motion to confirm plan. Docs. #50; #52. The

court intends to deny without prejudice the motion to confirm plan for procedural reasons, so the court is inclined to CONDITIONALLY DENY this motion to dismiss.

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 and failure to confirm a chapter 13 plan.

Trustee has reviewed the schedules and determined that this case has a liquidation value of \$5,599.50 after trustee compensation. This amount consists of the non-exempt value of Debtor's three vehicles and funds in a checking account at the time of filing. Since there is only a *de minimis* amount of equity that could be liquidated for the benefit of the estate, it appears that dismissal, rather than conversion, better serves the interests of creditors and the estate.

This matter will be called and proceed as scheduled to inquire about the parties' positions in light of denial of plan confirmation. The court intends to CONDITIONALLY DENY this motion and pursuant to § 1324(b), set April 14, 2023 as a bar date by which a chapter 13 plan must be confirmed, or the case will be dismissed on Trustee's declaration.

23. [22-11679](#)-B-13     **IN RE: DELANO/MONICA WILLIAMS**  
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE  
12-23-2022    [\[46\]](#)

MICHAEL MEYER/MV  
ANH NGUYEN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:        Granted.

ORDER:                The court will issue an order.

This motion was originally heard on February 8, 2023. Doc. #61.

Chapter 13 trustee Michael H. Meyer ("Trustee") moved to dismiss this case for cause pursuant to 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors and failure to confirm a chapter 13 plan. Doc. #46.

Delano Jamere Williams and Monica Marlene Williams (collectively "Debtors") timely responded, indicating that the *Second Amended Chapter 13 Plan* dated December 23, 2022 had been filed and was set for hearing. The court continued this motion be heard with the motion to confirm plan on February 15, 2023, which is the subject of matter #19 above. AVN-3.

Debtors recently withdrew their initial opposition because one joint debtor was recently placed on disability until June 2023 after giving birth. Doc. #62. As a result, Debtors' income has decreased significantly, and the proposed plan is no longer feasible.

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 that is prejudicial to creditors by failing to confirm a chapter 13 plan.

Trustee has reviewed the schedules and determined that Debtors' significant assets—vehicles and real property—are overencumbered. Since there is no equity that could be realized for the benefit of the estate, dismissal, rather than conversion, serves the interests of creditors and the estate.

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

10:00 AM

1. [23-10244](#)-B-11     **IN RE: BEAM & COMPANY, INC**  
[FW-2](#)

MOTION TO USE CASH COLLATERAL  
2-13-2023    [[6](#)]

BEAM & COMPANY, INC/MV  
PETER FEAR/ATTY. FOR DBT.

NO RULING.

2. [23-10244](#)-B-11     **IN RE: BEAM & COMPANY, INC**  
[FW-3](#)

MOTION TO PAY  
2-13-2023    [[10](#)]

BEAM & COMPANY, INC/MV  
PETER FEAR/ATTY. FOR DBT.

NO RULING.

11:00 AM

1. [22-11127](#)-B-7     **IN RE: SCOTT FINSTEIN**  
[22-1017](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
8-19-2022     [\[1\]](#)

NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURG V. FINSTEIN  
KAREL ROCHA/ATTY. FOR PL.  
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 the declaration of Karel Rocha filed by National Union Fire Insurance Company of Pittsburgh, PA ("Plaintiff") on February 10, 2023. Doc. #36.

On February 2, 2023, the court issued an order striking debtor Scott Einstein's ("Defendant") answer to the complaint. Doc. #33. Defendant was ordered to file an amended answer not later than 14 days after entry of that order, which is February 16, 2023. *Id.* Accordingly, this status conference will be CONTINUED to March 1, 2023 at 11:00 a.m. to be heard after the deadline to file an answer has expired.

2. [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 April 12, 2023 at 11:00 a.m.

ORDER:     The court will issue an order.

The court is in receipt of defendant Gregory Funding LLC's status conference statement. Doc. #117. It appears that all parties have executed a settlement agreement to resolve the adversary proceeding in its entirety. *Id.* Defendant expects dismissal in the near future and



therefore requests a 30- to 60-day continuance. *Id.* Accordingly, this status conference will be CONTINUED to April 12, 2023 at 11:00 a.m. If the adversary proceeding has not been dismissed before the continued hearing, the parties shall file a joint or unilateral status report not later than seven days before the hearing.

3. [18-11651](#)-B-11     **IN RE: GREGORY TE VELDE**  
[19-1007](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
1-7-2019     [[1](#)]

SUGARMAN V. BOARDMAN TREE FARM, LLC ET AL  
JOHN MACCONAGHY/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to September 27, 2023 at 11:00 a.m.

ORDER:     The court will issue an order.

The court is in receipt of liquidating trustee Randy Sugarman's ("Plaintiff") status report in the related consolidated proceeding. See Adv. Proc. No. 19-1033, Doc. #663. Due to ongoing discovery, Plaintiff recommends continuing the status conference for the related proceeding to at least September 15, 2023. *Id.* Accordingly, this status conference will be CONTINUED to September 27, 2023 at 11:00 a.m. The parties shall file a joint or unilateral status report not later than September 20, 2023.

4. [18-11651](#)-B-11     **IN RE: GREGORY TE VELDE**  
[19-1033](#)

CONTINUED STATUS CONFERENCE RE: THIRD-PARTY COMPLAINT  
2-24-2021     [[163](#)]

SUGARMAN V. IRZ CONSULTING, LLC ET AL  
KYLE SCIUCHETTI/ATTY. FOR PL.

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

DISPOSITION:     Continued to September 27, 2023 at 11:00 a.m.

ORDER:     The court will issue an order.

The court is in receipt of liquidating trustee Randy Sugarman's ("Plaintiff") status report. Doc. #663. Due to ongoing discovery, Plaintiff recommends continuing this status conference to at least September 15, 2023. *Id.* Accordingly, this status conference will be

CONTINUED to September 27, 2023 at 11:00 a.m. The parties shall file a joint or unilateral status report not later than September 20, 2023.

5. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**  
[19-1033](#) [CAE-1](#)

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

SUGARMAN V. IRZ CONSULTING, LLC ET AL  
JOHN MACCONAGHY/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 27, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of liquidating trustee Randy Sugarman's ("Plaintiff") status report. Doc. #663. Due to ongoing discovery, Plaintiff recommends continuing this status conference to at least September 15, 2023. *Id.* Accordingly, this status conference will be CONTINUED to September 27, 2023 at 11:00 a.m. The parties shall file a joint or unilateral status report not later than September 20, 2023.

6. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**  
[19-1033](#) [MB-7](#)

MOTION TO MODIFY ONE-DAY DEPOSITION LIMIT AS TO DEFENDANT'S  
PRINCIPAL WAYNE DOWNEY  
1-18-2023 [[641](#)]

SUGARMAN V. IRZ CONSULTING, LLC ET AL  
JOHN MACCONAGHY/ATTY. FOR MV.

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

DISPOSITION: Resolved by stipulation.

NO ORDER REQUIRED.

Liquidating trustee Randy Sugarman ("Plaintiff") moves for an order modifying the one-day deposition limit as to Wayne Downey, the principal of IRZ Consulting, LLC ("Defendant"). Doc. #641.

On February 1, 2023, the parties stipulated that the deposition of Defendant's principal may be extended to two days, consisting of one day of questioning by Plaintiff, and one day of questioning by all other parties. Doc. #661. The court approved the stipulation on

February 6, 2023. Doc. #662. Accordingly, this motion has been RESOLVED BY STIPULATION and will be dropped and taken off calendar.

7. [18-11651](#)-B-11     **IN RE: GREGORY TE VELDE**  
[19-1037](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL  
7-23-2018     [\[1\]](#)

IRZ CONSULTING LLC V. TEVELDE ET AL  
HAGOP BEDOYAN/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to September 27, 2023 at 11:00 a.m.

ORDER:     The court will issue an order.

The court is in receipt of liquidating trustee Randy Sugarman's ("Defendant") status report in the related consolidated proceeding. See Adv. Proc. No. 19-1033, Doc. #663. Due to ongoing discovery, Defendant recommends continuing the status conference for the related proceeding to at least September 15, 2023. *Id.* Accordingly, this status conference will be CONTINUED to September 27, 2023 at 11:00 a.m. The parties shall file a joint or unilateral status report not later than September 20, 2023.

8. [22-10982](#)-A-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.  
TRANSFERRED TO DEPT. A ON 1/30/23

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

DISPOSITION:     Status conference rescheduled to March 9, 2023 at  
11:00 a.m. before the Honorable Jennifer E. Niemann.

NO ORDER REQUIRED.

On January 31, 2023, the court transferred this case to Department A before the Honorable Jennifer E. Niemann. Doc. #28. The rescheduled status conference will be held in Department A on March 9, 2023 at 11:00 a.m. Accordingly, the hearing on this status conference will be dropped and taken off calendar.