UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, February 23, 2022
Place: Department B – Courtroom #13
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. 20-13208-B-13 **IN RE: ELIZABETH MARTIN AND AARON HAMPTON**
PWG-2

MOTION TO SET ASIDE DISMISSAL OF CASE
2-4-2022 [100]

AARON HAMPTON/MV
PHILLIP GILLET/ATTY. FOR DBT.
DATE DISMISSED: 9/13/2021

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

Elizabeth Leigh Martin and Aaron Scott Hampton ("Debtors") ask the court to vacate the order dismissing this case without prejudice entered September 13, 2021 under Civil Rule 60 (Rule 9024).[1] Doc. #100.

Though not required, chapter 13 trustee Michael H. Meyer ("Trustee") filed limited opposition to the motion. Doc. #104.

This motion was filed and served pursuant to LBR 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the defaults of non-responding parties will be entered. 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 filed chapter 13 bankruptcy on September 30, 2020. Doc. #1. The case was dismissed on March 3, 2021 for failure to pay filing fees. Docs. ##42-43. No plan was ever confirmed. That dismissal order was vacated on March 10, 2021 for excusable neglect. Docs. ##54-55.

Trustee filed an objection to plan confirmation under LBR 3015-1(c)(4), which was sustained because Debtors failed to either file a written response or set a modified plan for hearing. Docs. #63; #77. Since Debtors did not respond and the case had been pending for over six months, the court set July 7, 2021 as a bar date by which a chapter 13 plan must be confirmed, or the case would be dismissed on Trustee's declaration. Doc. #85.

On July 6, 2021, Trustee and Debtors, through their attorney Phillip W. Gillet, Jr., stipulated that (1) Debtors will file a modified plan to pay 100% to unsecured creditors and (2) Trustee's motion to dismiss

(MHM-4) would be continued to September 8, 2021. Doc. #88. Trustee later withdrew the motion to dismiss, and it was dropped from calendar. Docs. #92; #94.

On September 9, 2021, since no amended plans had been filed, Trustee filed a declaration stating that the Debtors did not file a modified plan by the stipulated September 8, 2021 bar date. Doc. #95. The court dismissed the case on September 13, 2021 on Trustee's declaration. Doc. #97.

Now, Debtors move to set aside the dismissal under Civil Rule 60 because the case was dismissed due to mistake, inadvertence, or excusable neglect. Doc. #100.

Attorney Gillet declares that he was admitted to the hospital on April 27, 2021 with viral cardiomyopathy, which caused his heart to pump less than one-third of the normal amount with each beat. Doc. #102. As a result, Mr. Gillet was hospitalized and treated for this condition, which he says takes around 12 months for recovery. *Id.* During this time, his stamina and ability to work were limited, causing delays and a backlog of work at his office. Further, Mr. Gillet's paralegal was absent due to maternity leave.

Mr. Gillet says that he stipulated to continue the motion to dismiss to September 8, 2021. When Trustee withdrew the motion to dismiss on August 25, 2021, Mr. Gillet thought that the matter was dropped from calendar, which it was. Doc. #102. Mr. Gillet had planned on setting a motion to confirm plan for some time in November 2021. *Id.*

It appears that Mr. Gillet did not realize that the July 6, 2021 stipulation, in effect, was an extension of the July 7, 2021 bar date by which a plan had to be confirmed. Doc. #85. Though the stipulation makes no mention of the bar date, Trustee could have filed a declaration to dismiss the case the very next day because no plan had been confirmed. Rather than filing that declaration, Trustee privately agreed to give Debtors additional time to file a modified plan with a 100% distribution to creditors.

Thereafter, Trustee withdrew the motion to dismiss set for September 8, 2021. Without speculating, the court wonders whether this withdrawal was to prevent the motion from being granted by pre-hearing disposition due to Debtors' failure to timely file written opposition and failure to confirm a modified plan by the July 7, 2021 bar date. On September 9, 2021, since no plan had been filed, Trustee enforced the previous confirmation bar date by declaration. Doc. #95.

After dismissal, Debtors attempted to negotiate with creditors in good faith to pay creditors 100% over time but were unsuccessful in doing so.

Mr. Gillet indicates that Trustee is holding $18,054.73 in plan payments. He also says that Debtors have been setting aside a plan

payment each month and believe they can catch up on all payments if their dismissal is set aside. Debtors are aware that any collection activities occurring before the case is reinstated will not be subject to the automatic stay or unwound, but desire to pay creditors as quickly as possible, and do not wish to file another case to further damage their credit. If the case is reinstated, Mr. Gillet promises to file and serve a motion to confirm a modified chapter 13 plan within 30 days. *Id.*

In reply, Trustee says that two refund checks totaling $18,054.73 were issued in September and sent to Debtors. Doc. #104. The checks were not negotiated and expired in December 2021. Trustee was informed that Debtors were instructed not to negotiate the outstanding checks because a motion to set aside dismissal would be filed soon thereafter.

In January 2022, Trustee contacted Mr. Gillet's office, who indicated that the motion to set aside dismissal would be filed on January 31, 2022. The checks were canceled, and a hold was placed on the case so the funds would not be re-disbursed based on Mr. Gillet's representations. Since no motion to set aside dismissal was docketed, Trustee's office re-issued the funds back to Debtors. The next day, this motion was filed. *Id.*

Trustee does not oppose setting aside the dismissal provided that Mr. Gillet's representations are accurate that Debtors have set aside each and every plan payment from the month of dismissal. But if Debtors do not have a large lump sum to pay the equivalent of five months of plan payments, then Trustee questions whether setting aside the dismissal is truly in the best interests of Debtors and Creditors, rather than refiling a new case. *Id.*

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

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

The issue is whether Mr. Gillet's failure to timely file and confirm a modified plan before the bar date was "excusable." At bottom, this determination is "an equitable one taking account of all relevant circumstances surrounding the party's omission." *Pioneer*, 507 U.S. at 395. The factors to consider include:

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

1. Prejudice to the debtors: If the dismissal is not set aside, Debtors are concerned that refiling the case will result in further damage to their credit. Debtors want to repay their creditors as quickly as possible and do not wish to restart 60 months of plan payments from month 1. Debtors say that five months of plan payments have been set aside in anticipation of reinstating this case.

Whether further damage to the Debtors' credit will result is now prognostication, not quantifiable reality. The Debtors have had this case dismissed for some months and a previous dismissal was set aside. Though hesitancy to be part of a five-year commitment is understandable, the debtors can arrange to pay off the plan with 100% of allowed claims paid.

If the court does not set aside the dismissal, Debtors would need to file a new case. Shortly after filing their petition, exemption limits under Cal. Code Civ. Proc. ("C.C.P.") §§ 703.010-704.995 were increased. Debtors own real property valued at $445,000.00, but claimed exemptions under C.C.P. § 703.140, so that real property was not exempted. Docs. #1, *Sched. A/B*; #29, *Am. Sched. C*. If the dismissal stands, Debtors may potentially take advantage of the higher exemption values. This factor appears to be neutral or favor denial of the motion.

2. Length of Delay: This case was dismissed September 13, 2021, which is more than five months ago. The original deadline by which the court required a plan to be confirmed was July 7, 2021 – seven and one-half months ago. Though Mr. Gillet's hospitalization explains Trustee's stipulated time extension, it does not explain why Debtors waited five months to file this motion.

As the debtors recognize, even if the court is inclined to grant the motion, which it is not, any order would be without prejudice to actions taken by creditors in reliance on the dismissal. Thus, filing a new case will likely not change that fact. This factor weighs in favor of denying the motion.

3. Reason for Delay: The reason for the initial delay in confirming a plan by July 7, 2021 is explained by Mr. Gillet's April hospitalization. Next, Mr. Gillet misunderstood that Trustee treated the stipulated continuance on the September 8, 2021 motion to dismiss as an informal deadline to file a 100% plan or else Trustee would enforce the July 7, 2021 confirmation bar date. However, the bar date was a court order, and the Trustee has no authority to nullify the

order. The Trustee or Debtors needed to make a motion to modify the order. Neither did.

Even still, no explanation is provided for why Debtors waited an additional five months after dismissal to file this motion when it could have been brought much sooner. In fact, the evidence suggests the Debtors were cognizant of their situation as Mr. Gillet's declaration states the debtors attempted to work with their creditors outside of the bankruptcy law to no avail.

4. Good faith: There is no indication that Debtors have acted in bad faith. If Debtors do in fact have a lump sum totaling five months of payments while the case has been dismissed, then there is evidence that Debtors have been acting in good faith. This factor militates in favor of granting the motion but is but one factor to consider.

This matter will be called as scheduled. The court is inclined to DENY the motion.

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

2. 22-10109-B-13 **IN RE: JULIE MARTINEZ**
SLL-1

MOTION TO EXTEND AUTOMATIC STAY
2-1-2022 [8]

JULIE MARTINEZ/MV
STEPHEN LABIAK/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.

Julie Ann Martinez ("Debtor") seeks an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #8.

Written opposition was not required and may be presented at the hearing. This matter will be called as scheduled to inquire whether any parties in interest oppose stay relief.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults. If opposition is presented at the hearing, the court will set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period but was dismissed, then the automatic stay with respect to the debtor under subsection (a) shall terminate on the 30th day after the filing of the latter case. Debtor had one case pending within the preceding one-year period that was dismissed: Case No. 19-12622. That case was filed on June 18, 2019 and dismissed on November 17, 2021 for failure to make plan payments. This case was filed on January 28, 2022 and the automatic stay will expire on February 27, 2022. Doc. #1.

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

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.' Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition.'" *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by *Taggart v. Lorenzen*, 139 S. Ct. 1785 (2019)).

Here, the subsequently filed case is presumed to be in bad faith as to all creditors because Debtor has more than one case under chapter 13 that was pending within the preceding one-year period. 11 U.S.C. § 362(c)(2)(C)(i)(III).

Debtor declares that the previous case was dismissed because Debtor fell behind on plan payments. Doc. #10. Because of COVID-19, Debtor's hours at work were reduced and became sporadic. Though Debtor works at a hospital, certain areas were busy while others were slower due to the lack of optional surgeries. Debtor's job involves billing, and since there were less optional surgeries, there was less work. Debtor's work schedule is now "mostly back to normal" because optional surgeries are being performed, Debtor's workload has increased, and she can now afford the plan payment. Moreover, Debtor says that her

employer has adapted to COVID-19, so further reductions in work hours are not anticipated.

Debtor faced increasing expenses due to mold in her home requiring the floors and carpeting to be replaced. Debtor also had to repair the heating system and replace a washing machine. She anticipates these are one-time expenses that will not need to be repeated. *Id.*

Debtor's annual income in 2020 was $43,497, and in 2021, $52,880. *Id.* This increase, Debtor says, shows that she is making more money and will be able to afford the plan payment. Debtor also received a raise in 2021 from $27.81 to $29.00 per hour, so her projected income moving forward should be even higher. Lastly, Debtor's mother lives with her and earns approximately $700 per month in social security. In exchange for care, Debtor's mother contributes to household expenses.

Debtor describes the reduction in income and one-time household expenses as a "downward spiral" that Debtor was unable to recover from. Now, Debtor's income has stabilized and increased, and the one-time expenses are behind her. As such, Debtor is now in a position where she can make plan payments for an extended period, confirm a plan, and complete the bankruptcy process in a timely manner. *Id.*

Debtor's proposed chapter 13 plan provides for 60 monthly plan payments of $2,230.00 and provides for a 0% distribution to unsecured creditors. Doc. #3. Debtor's schedules indicate that Debtor has $2,230.00 in monthly net income. Doc. #1, *Sched. J*.

Based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption of bad faith has been rebutted. Debtor's petition appears to have been filed in good faith. The court intends to grant the motion and extend the automatic stay as to all creditors provided that no opposition is presented at the hearing.

The court is inclined to GRANT the motion and extend the automatic stay for all purposes as to all parties who received notice, unless terminated by further order of this court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2).

3. 16-14310-B-13 **IN RE: AMELIA RODRIGUEZ CARRILLO**
RS-3

OBJECTION TO CLAIM OF BENEFICIAL STATE BANK, CLAIM NUMBER 2-1
1-4-2022 [72]

AMELIA RODRIGUEZ CARRILLO/MV
RICHARD STURDEVANT/ATTY. FOR DBT.

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

Amelia Rodriguez Carrillo ("Debtor") objects under 11 U.S.C. § 502(b) to Proof of Claim No. 2-1 in the amount of $15,555.46 filed by Beneficial State Bank ("Claimant") on May 31, 2017. Doc. #72. Debtor objects because the deadline to file proofs of claim for nongovernmental units was April 10, 2017. Doc. #14.

Since the chapter 13 trustee has already paid $8,018.80 to Claimant as an unsecured creditor, Debtor asks to disallow the remainder of the claim in the amount of $7,536.66. Doc. #66.

This motion will be OVERRULED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("Rule"). The court notes that this is Debtor's third attempt to object to this claim, with the first two attempts being denied for procedural issues. RS-1; RS-2.

Rule 3007(a)(2)(A) requires an objection to a proof of claim and its corresponding notice to be served on the claimant by first-class mail to the person most recently designated on the claimant's proof of claim as the person to receive notices, *and* if the objection is to a claim of an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act, in the manner provided in Rule 7004(h).

Rule 7004(h) requires that service on an insured depository institution in a contested matter to be made by certified mail addressed to an officer of the institution unless certain exceptions are satisfied. Rule 7004(h)(1)-(3). There is no indication that any of those exceptions apply.

Here, Claimant is 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).[2] Debtor properly served Claimant in accordance with Rule 7004(h) by serving Richard H. Harvey, Jr., Claimant's secretary, by certified mail at the correct address

specified in Claimant's *Statement of Information* filed with the California Secretary of State on October 14, 2021.[3] Doc. #74.

However, Claimant did not serve the name and address listed in the proof of claim. Claim 2 lists the following name and address for which notices to Claimant must be sent:

> Beneficial State Bank
> PO BOX 2900
> PORTERVILLE, CA 93258

Claim 2-1. The court notes that this address was properly served in Debtor's first objection to claim (RS-1), but that objection contained a typographical error in the Rule 7004(h) service attempt, among other noticing deficiencies. Doc. #61. The second attempt (RS-2) omitted this address, and corrected service under Rule 7004(h), but there was also a defect in the *Notice of Hearing*. Doc. #70. That attempt also should have notified Claimant at the name and address listed in Claim 2.

Rule 3007(a)(2)(A) is clear: in the case of insured depository institutions, both service on the name and address in the proof of claim and Rule 7004(h) service on the institution is necessary.

For the above reason, this objection will be OVERRULED WITHOUT PREJUDICE.

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[2] *See* FDIC Cert #58490, https://banks.data.fdic.gov/bankfind-suite/bankfind (Feb. 9, 2022).
[3] *Oct. 14, 2021 Statement of Information*, File No. C3692096, Cal. Secretary of State, https://businesssearch.sos.ca.gov/ (Feb. 9, 2022).

4. 20-13727-B-13 **IN RE: ADOLFO/AURELIA HERNANDEZ**
MHM-2

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 2
1-6-2022 [111]

MICHAEL MEYER/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

ORDER: The Objecting Party shall submit a proposed order after hearing.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Proof of Claim No. 2 filed by Cavalry SPV I, LLC ("Claimant") on November 30,

2020 in the sum of $1,547.83 and seeks that it be disallowed in its entirety under Fed. R. Bankr. P. ("Rule") 3007(d)(2).[4] Doc. #111; Claim 2-1.

No party in interest timely filed written opposition. This objection will be SUSTAINED.

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(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 sustaining of the objection. *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 objecting 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 objecting party has done here.

Trustee asks the court to take judicial notice of Claim 2. Doc. #113. 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 Gmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of Claim 2, but not the truth or falsity of such claim 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).

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under § 501, is deemed allowed, unless a party in interest objects.

Trustee is a party in interest within the meaning of § 502(a). Section 704(5) requires the trustee to examine proofs of claim and object to the allowance of any claim that is improper. *In re Thompson*, 965 F.2d 1136 (1st Cir. 1992).

Rule 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

Trustee has established that the statute of limitations in California bars a creditor's action to recover on a contract, obligation, or liability founded on an oral contract after two years, and a written instrument after four years. *See* Cal. Code Civ. Proc. §§ 312, 337(1), and 339. A claim that is unenforceable under state law is also not allowed under § 502(b)(1) upon objection. *In re GI Indust., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

According to Claim 2, the debtors have not made any payments nor had any transactions on the debt owed to Claimant since February 8, 2016. Claim 2. The account was charged off on September 13, 2016 and no transactions were made in the four years prior to the petition date on November 25, 2020. Therefore, the four-year statute of limitations for a written contract under California law has passed and Claim 2 will be disallowed in its entirety.

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[4] Claimant was properly served on January 6, 2022 by first-class mail to the person designated on Claimant's proof of claim as the person to receive notices at the address indicated in accordance with Rule. 3007(a)(2)(A). Doc. #115.

5. 20-13727-B-13 **IN RE: ADOLFO/AURELIA HERNANDEZ**
MHM-3

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1
1-7-2022 [116]

MICHAEL MEYER/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

ORDER: The Objecting Party shall submit a proposed order after hearing.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Proof of Claim No. 1 filed by Cavalry SPV I, LLC ("Claimant") on November 30, 2020 in the sum of $886.88 and seeks that it be disallowed in its entirety under Fed. R. Bankr. P. ("Rule") 3007(d)(2).[5] Doc. #116; Claim 1-1.

No party in interest timely filed written opposition. This objection will be SUSTAINED.

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(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 sustaining of the objection. *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 objecting 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 objecting party has done here.

Trustee asks the court to take judicial notice of Claim 1. Doc. #118. 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 Gmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of Claim 1, but not the truth or falsity of such claim 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).

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under § 501, is deemed allowed, unless a party in interest objects.

Trustee is a party in interest within the meaning of § 502(a). Section 704(5) requires the trustee to examine proofs of claim and object to the allowance of any claim that is improper. *In re Thompson*, 965 F.2d 1136 (1st Cir. 1992).

Rule 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

Trustee has established that the statute of limitations in California bars a creditor's action to recover on a contract, obligation, or liability founded on an oral contract after two years, and a written instrument after four years. *See* Cal. Code Civ. Proc. §§ 312, 337(1), and 339. A claim that is unenforceable under state law is also not allowed under § 502(b)(1) upon objection. *In re GI Indust., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

According to Claim 1, the debtors have not made any payments nor had any transactions on the debt owed to Claimant since February 8, 2016. Claim 1. The account was charged off on September 13, 2016 and no transactions were made in the four years prior to the petition date on

November 25, 2020. Therefore, the four-year statute of limitations for a written contract under California law has passed and Claim 1 will be disallowed in its entirety.

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[5] Claimant was properly served on January 6, 2022 by first-class mail to the person designated on Claimant's proof of claim as the person to receive notices at the address indicated in accordance with Rule. 3007(a)(2)(A). Doc. #119.

6. 16-13240-B-13 **IN RE: EDWARD/SHARON RODGERS**
MHM-1

CONTINUED MOTION TO DISMISS CASE
11-18-2021 [56]

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

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

DISPOSITION: Motion dismissed.

ORDER: The court will issue the order.

Chapter 13 trustee Michael H. Meyer withdrew this motion on February 16, 2022. Doc. #80. Accordingly, this motion will be DISMISSED.

7. 17-14157-B-13 **IN RE: VICTOR ISLAS AND LORENA GONZALEZ**
TCS-7

MOTION FOR COMPENSATION BY THE LAW OFFICE OF TIMOTHY C. SPRINGER FOR NANCY D. KLEPAC, DEBTORS ATTORNEY(S)
1-14-2022 [208]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Nancy D. Klepac of the Law Offices of Timothy C. Springer ("Applicant"), attorney for Victor Islas and Lorena Gonzalez ("Debtors"), seeks final compensation in the sum of $1,500.00 under 11

U.S.C. § 330. Doc. #208. This amount consists solely of fees for services rendered from April 30, 2020 through December 20, 2021.

Debtors signed a statement of consent on January 10, 2022 indicating that Debtors have received and read the fee application and approve the same. *Id.*, at 5, § 9(7).

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *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.

The Fifth Modified Chapter 13 Plan is the operative plan in this case. Docs. #204; #213. Section 3.05 indicates that Applicant was paid $0.00 prior to filing the case and, subject to court approval, additional fees of $6,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017.

This is Applicant's second and final request for compensation. The source of funds for payment of the fees will be from the chapter 13 trustee in conformance with the chapter 13 plan. Doc. #208. On September 4, 2020, Applicant was awarded $4,455.00 in fees and $10.90 in expenses, but the court noted that the Fourth Modified Chapter 13 Plan provided for only $2,000.00 in attorney fees. Doc. #196; *cf.* Doc. #161. The order on that application, however, only provided for an award of $2,000.00. Doc. #197. Debtors subsequently confirmed the Fifth Modified Plan on February 10, 2022. Doc. #213. Applicant says that $2,000.00 has been paid through the plan, but the application was filed before the plan was confirmed. It does not appear that the remaining $2,465.90 is included in the interim approval award, nor does it appear that Applicant requests it here. Doc. #197. If the full interim award were to be paid, $1,534.10 would remain allocated in the plan to pay attorney fees. But if only $2,000.00 has been paid, then $4,000.00 remains in the plan.

Applicant provided 5.0 billable hours of legal services at a rate of $300 per hour, totaling **$1,500.00** in fees. Docs. #208, § 7; #210, *Exs. C*, *D*. Applicant did not incur any expenses.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person, or attorneys" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) communicating with Debtors regarding filing a modified plan under the CARES Act; (2) preparing, filing, and confirming the Fourth and Fifth Modified Plans (NDK-7, NDK-8); and (3) preparing and filing this fee application (TCS-7). Doc. #210, *Ex. A*, *B*, *C*. The court finds the services and expenses reasonable, actual, and necessary. Debtors have consented to this fee application. Doc. #208, at 5, § 9(7).

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded $1,500.00 in fees on a final basis pursuant to § 330. The chapter 13 trustee is authorized, in his discretion, to pay Applicant $1,500.00 in accordance with the chapter 13 plan for services rendered and expenses incurred from April 30, 2020 through December 20, 2021. Further, the court will approve on a final basis the $2,000.00 in fees and previously awarded on September 4, 2020. The total fees and expenses for this chapter 13 case are $3,500.00.

8. 21-12469-B-13 **IN RE: JUAN/SARAH AYON**
MHM-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
1-5-2022 [17]

SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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.

Chapter 13 trustee Michael H. Meyer ("Trustee") objected to confirmation of Juan Carlos Ayon's and Sarah Louise Ayon's ("Debtors") plan because it does not provide for all of Debtors' projected disposable income to be applied to unsecured creditors. Doc. #17. Additionally, Trustee objected to payment scheme outlined in the plan's Additional Provisions in Section 7.01.

The objection to confirmation was previously continued so that Debtors could file and serve a reply by February 9, 2022, or a modified plan by February 16, 2022. Doc. #22.

Debtors timely replied on February 9, 2022. Doc. #27.

Trustee responded on February 16, 2022. Doc. #30.

This matter will be called and proceed as scheduled. Since Debtors appear to have revolved Trustee's objection, the court is inclined to OVERRULE AS MOOT.

First, Trustee objected under 11 U.S.C. § 1325(b)(1) because the plan fails to pay the unsecured, non-priority creditors all of Debtors projected disposable income as defined in § 1325(b)(1)(B). *Id.* At the § 341 meeting of creditors on December 7, 2021, joint debtor Juan Ayon testified that he had received a raise in August 2021, causing his base salary to increase from $7,743.09 to $8,544.64, or $801.55 per month. Additionally, Mr. Ayon testified that he is required to work up to 80 hours of overtime per month. *Id.* Trustee indicated that Mr. Ayon was paid $5,575.32 in overtime on August 12, 2021, and $6,827.23 on September 13, 2021, for 80.0 and 93.17 overtime hours, respectively. *Id.*, at 3.

Trustee also noted discrepancies in the Debtors' Form 122C-2 for certain deductions and requests that Debtors amend Form 122C-2 or provide additional evidence, if any, supporting the claimed deductions. *Id.* Debtors amended Form 122C-1 and -2 on January 6, 2022. Doc. #20. Those disputed deductions are as follows:

> ¶ 17, Involuntary deductions: $1,345.16 is deducted for involuntary retirement contributions, but Trustee says that Mr. Ayon's paystubs mandatory retirement contributions and union dues collectively total $1,105.41 per month. Doc. #1, Form 122C-2. Debtor contributes to a voluntary post-retirement benefit plan labeled "OPEB/CERBT" in the amount of $309.72, but the Bankruptcy Appellate Panel has held that for above-median income debtors, post-petition retirement contributions are not excluded from disposable income. *In re Parks*, 475 B.R. 703 (2012). Debtors reduced this deduction to $1,087.06. Doc. #20.
>
> ¶ 35, Priority claims: Debtors claim $73,264.00 in past due priority claims, which equates to $1,221.07 over 60 months. However, proofs of claim filed by the Franchise Tax Board and Internal Revenue Service show that the priority debt totals $59,804.03, which only allows for a deduction of $996.73 over 60 months. Claim Nos. #2; #6. In the amended Form 122C-2, this deduction was unchanged. Doc. #20.
>
> ¶ 36, Projected chapter 13 payment: Debtors project a plan payment of $2,850.00 at 10% interest. Trustee objects because the U.S. Trustee website only allows for an administrative expense

multiplier of 7.2% for cases filed on or after May 15, 2021.[6] Debtors reduced the multiplier percentage to 7.2%. *Id.*

Second, Trustee objected to the Additional Provisions in Section 7.01 of the plan. The plan provides for monthly payments of $2,825.00 per month for 60 months. Doc. #3. Debtors' attorney was paid $1,761.00 prior to filing the case and additional fees of $32,451.00 will be paid through the plan pursuant to court approval under §§ 329 and 330.

Under Section 3.06, $2,550.00 of the monthly payment is allocated to administrative expenses until paid in full. Section 7.01(1) requires Trustee to set aside this portion except to maintain post-petition monthly payments to holders of Class 1 claims (there are none). *Id.* Under 7.01(2)(a) and (b), Debtors' attorney is to file a fee application by the later of 310 days after the petition date (August 27, 2022), or 180 days after plan confirmation. If that deadline is missed, Trustee may distribute the funds to creditors.

Trustee noted that Debtors' attorney does not anticipate objecting to improper or invalid proofs of claim; filing and serving motions to buy, sell, or refinance property; preparing, filing, and serving motions to avoid liens or motions to value; or any litigation. Doc. #17. Debtors' attorney might file a motion to incur debt to cosign student loans, and he does anticipate performing other tasks typically required as duties for attorneys electing to be compensated under the $4,000.00 "no look" fee of LBR 2016-1(c).

Though Trustee says that Debtors' attorney does not anticipate enough work to require the fees provided for in the plan, only nominal amounts are distributed to creditors until the $32,451.00 in attorney fees are paid in full. Trustee also noted that the distribution of excess funds after payment of the monthly dividend to creditors is never paid pro-rata to the attorney fee claim and nothing in the plan directs Trustee to retain the monthly dividend for attorney administrative claims if the attorney elects to be paid through an application for compensation. Further, the plan, Bankruptcy Code, Federal Rules, and LBR do not provide any guidance as to the appropriate amount or range of fees that should be withheld pending application for approval of fees. As result, under the current plan, no creditors will be paid for nearly a year. A sum of $28,050.00 is accumulated during the first 11 months for attorney fees and, if the case is dismissed, returned to the Debtor with no payments to creditors. If a maximum fee application is approved after 12 months, an additional $4,401.00 will be accumulated before any priority creditors receive payment, and only in month 14 will priority claims begin to be paid.

Debtors replied, agreeing to: (1) raise the percentage paid to general unsecured claims from 10% to 100%; (2) reduce the attorney fees payable through the plan from $32,451.00 to $12,000.00; and (3) increase the plan payment from $2,825.00 per month to $5,375.00 per month starting in month 5 of the plan. Doc. #27. Debtors' attorney

indicates that Debtors are able to pay this increased plan payment based on present income and expenses.

In response, Trustee will prepare an Order Confirming Plan if the court approves the plan at the hearing. Doc. #30. After running a calculation based on the newly proposed plan payment, Trustee believes that it only needs to increase to $3,800.00 to pay $12,000.00 in attorney fees and all priority and unsecured creditors 100% over the remaining 55 months of the plan.

Accordingly, it appears that Debtors have resolved Trustee's objection with their proposed plan modifications. This matter will be called and proceed as scheduled. The court is inclined to OVERRULE AS MOOT the objection based on Debtors' proposed modifications.

Any confirmation order shall be approved by Trustee and Debtors' attorney and reference the plan by the date it was filed.

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[6] https://www.justice.gov/ust/eo/bapcpa/20210515/bci_data/ch13_exp_mult.html.

9. 19-13072-B-13 **IN RE: GARY/SANDRA BOZARTH**
DMG-5

MOTION FOR COMPENSATION FOR D. MAX GARDNER, DEBTORS ATTORNEY(S)
1-26-2022 [75]

D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Granted in part; denied in part.

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

D. Max Gardner ("Applicant"), attorney for Gary Michael Bozarth and Sandra Marie Bozarth ("Debtors"), seeks final compensation in the sum of $1,120.77 under 11 U.S.C. § 330. Doc. #75. This amount consists of $1,085.00 in fees as reasonable compensation and $35.77 in actual, necessary expenses incurred for the benefit of the estate from April 21, 2020 through January 26, 2022. Applicant also seeks final approval of $4,184.92 awarded as interim compensation under § 331.

No statement of consent was filed with this motion. However, Applicant's previous attempt set for hearing on January 26, 2022 was denied without prejudice for procedural deficiencies. *See* DMG-4. As part of that motion, Debtors signed a statement of consent to the identical amount on January 11, 2022. Doc. #72. Applicant is advised to include the Statement of Consent in future fee applications.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *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.

First, the application appears to be erroneous. It says: (a) Debtors paid Applicant a pre-petition retainer of $2,000.00; (b) Applicant incurred $2,759.00 in fees pre-petition; (c) the $2,000.00 pre-petition retainer was applied to the pre-petition fees, and (d) the balance due and owing as of October 15, 2018 is $759.00. Doc. #75, ¶¶ 4-7. However, this bankruptcy case was filed July 19, 2021 and Applicant is not listed in the schedules as an unsecured creditor of Debtors. Doc. #1.

Meanwhile, the original chapter 13 plan is the operative plan in this case. Docs. #8; #28. Section 3.05 says that Applicant was paid $1,500.00 prior to filing the case and, subject to court approval, additional fees of $6,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #8. The *Disclosure of Attorney Compensation* and *Rights and Responsibilities*, Forms B2030 and EDC 3-096, respectively, also indicate that Debtors paid $1,500.00 prior to filing the case. Docs. #1; #7. Assuming that the $310.00 filing fee is omitted still leaves $190.00 in fees supposedly paid but not accounted.

The invoices filed with the first interim fee application provide clarification. Debtors had a $0.00 balance forward as of February 28, 2019. Applicant performed $2,015.00 in pre-petition services, with Debtors paying $1,810.00 on July 18, 2019, including the $310.00 filing fee, resulting in a balance of $205.00 on the petition date. Doc. #45, *Ex A*. This amount plus Applicant's post-petition services of $3,937.00, resulted in Applicant's first request for $4,142.00 in fees and $42.92 in expenses, for a total of $4,184.92. Doc. #42. On July 10, 2020, the court approved the same on an interim basis for fees and expenses between July 19, 2019 and April 20, 2020. Doc. #54.

Since then, Applicant has provided 3.5 billable hours of legal services at a rate of $310 per hour, totaling **$1,085.00** in fees. Doc. #75, *Ex. A*. Applicant also incurred **$35.77** in postage and delivery expenses. *Id.* The combined fees and expenses in this application total **$1,120.77**. The source of funds for will be $1,120.77 from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. Doc. #75. Since Applicant was previously awarded $4,184.92 in fees and expenses, $1,815.08 remains allocated in the plan for attorney fees.

Applicant also asks for final approval of the amounts previously awarded. Applicant's declaration says that he is seeking final approval of $7,269.92, but if the court does not approve using the pre-petition retainer, then he adjusts the total amount to $5,269.92. It is unclear where these totals come from. Based on the record, total fees in this case appear to be:

$1,810.00 pre-petition
$4,184.92 first interim application
+ $1,120.77 second final application
= $7,115.69 total

So, it is unclear where Applicant adds $154.23 to the final request. The alternate relief seeking a final total of $5,269.92 causes even more confusion.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person, or attorneys" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) preparing, filing, and prosecuting a motion to sell real property (DMG-3); (2) finalizing the first interim fee application (DMG-2); and (3) preparing and filing this fee application (DMG-5). Doc. #78, *Ex. A*. The court finds the services and expenses reasonable, actual, and necessary. Debtors consented to payment of this amount on January 11, 2022 in Applicant's identical motion that was denied for procedural errors. Doc. #72.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED IN PART as outlined above. Applicant will be awarded $1,085.00 in fees and $35.77 in expenses on a final basis pursuant to § 330. The chapter 13 trustee is authorized, in his discretion, to pay Applicant $1,120.77 in accordance with the chapter 13 plan for services rendered and expenses incurred from April 21, 2020 through January 26, 2022. Further, the court will approve on a final basis the $4,184.92 previously awarded on July 10, 2020. The total fees and expenses for this chapter 13 case, including Debtors' pre-petition retainer of $1,810.00, are $7,115.69. The motion will be DENIED IN PART as to the erroneous totals.

11:00 AM

1. 20-10024-B-7 **IN RE: SUKHJINDER SINGH**
20-1036 JRL-3

MOTION BY JERRY R. LOWE TO WITHDRAW AS ATTORNEY
1-10-2022 [87]

SALVEN V. SINGH ET AL

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.

Jerry R. Lowe ("Counsel"), attorney for defendants Sukhjinder Singh, Manjinder Singh, Lakhvir Singh, and Balwinder Kaur (collectively "Defendants"), seeks to withdraw as counsel of record for Defendants under Cal. R. Prof'l Conduct ("RPC"), Rules 1.16(b)(4) and (5). Doc. #87.

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.

Defendants retained Counsel on June 25, 2020. Doc. #89. An initial retainer was paid and exhausted by September 2020. Debtors replenished their account according to the retainer agreement, but that amount was exhausted by January 2021. *Id.* Counsel says that Defendants have a current balance owed, but that defendant Manjinder Singh has represented that Defendants have paid enough and will only pay additional legal fees if Defendants prevail, which is contrary to the retainer agreement. *Id.*

Counsel declares that Defendants have been provided with detailed billing through September 2021, copies of all work product, and an opportunity to dispute or request adjustments to the bill. Defendants have not disputed the bill but also have not paid the balance owed for legal services, so they are in breach of the legal services agreement.

It is Counsel's belief that Defendants would prefer to represent themselves rather than to continue to pay for representation. Counsel has advised Defendants that if they are not represented by counsel, (a) they are still responsible to know the rules and procedures of the court, (b) they will not be given any assistance from the court in their case, and (c) they will be expected to follow all applicable rules and procedures outlined in the Federal Rules of Civil Procedure

and Federal Rules of Bankruptcy Procedure. Further, Defendants have been assisted through the discovery phase, been advised of the legal and evidentiary issues, legal defenses, and the consequences of prevailing or losing the case.

Counsel indicates that Defendants understand the above and believe that they have a strong defense, but this is hearsay, and no evidence of this understanding is provided in the motion or declaration. *Id.*

Alternatively, Counsel notes that Defendants have failed to appear at several meetings in person and by Zoom, so Defendants have also become unreasonably difficult.

LBR 2017-1(e) provides that an attorney who has appeared may not withdraw leaving the client *in propria persona* without leave of the court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal of an attorney is governed by the Rules of Professional Conduct of the State Bar of California and Counsel shall conform to the requirements of those rules.

RPC 1.16(b)(5) (formerly 3-700(C)(1)(f)) permits a lawyer to withdraw from representing a client if the client breaches a material term of an agreement with the lawyer relating to representation, and the lawyer has given the client a reasonable warning after the breach that the lawyer will withdraw unless the client fulfills the agreement.

RPC 1.16(b)(4) (formerly 3-700(C)(1)(d)) permits withdrawal if the client by other conduct renders it unreasonably difficult for the lawyer to carry out the representation effectively.

Here, Counsel says that Defendants breached a material term of their legal services agreement. Counsel provided reasonable warning that he will withdraw, and Defendants allegedly agreed, preferring to represent themselves rather than pay additional legal fees. Withdrawal under RPC 1.16(b)(5) appears to be appropriate, but no copy of the legal services agreement, invoices, payment history, or Defendants' consent to the withdrawal have been provided.

Defendants have also missed scheduled meetings, including depositions, resulting in the imposition of sanctions. RWR-2; RWR-3. Thus, withdrawal under RPC 1.16(b)(4) is also available.

For LBR 2017-1(e) purposes, Counsel includes Defendants' names and last known or current addresses in the *Amended Notice of Hearing*. Doc. #92.

Since Defendants will be left *pro se* post-withdrawal, this matter will be called and proceed as scheduled. Based on Counsel's representations, the court is inclined to GRANT this motion to allow

Counsel to withdraw as attorney for Defendants in this adversary proceeding. The authority and duty of Counsel as attorney for Defendants shall continue until the court enters an order. The order shall include Defendants' names and last known addresses.

2. 18-11651-B-11 **IN RE: GREGORY TE VELDE**
19-1007

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

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

NO RULING.

The court previously ordered Plaintiff Randy Sugarman to file a status conference statement not later than February 16, 2022. Doc. #130. No such status conference statement was filed. However, Plaintiff filed a status report on February 15, 2022 in related Case No. 19-1033 (matters ##3-4 below). This matter will be called as scheduled to inquire about the current status of this case.

3. 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.
RESPONSIVE PLEADING

NO RULING.

The court is in receipt of Plaintiff Randy Sugarman's status report filed February 15, 2022. Doc. #326. Fact and expert discovery are ongoing and will conclude October 1, 2022 and February 15, 2023, respectively. The parties are in the process of scheduling depositions. After discovery closes, the parties anticipate that the case will be ready to be transferred to District Court for a jury trial. This matter will be called as scheduled.

4. 18-11651-B-11 **IN RE: GREGORY TE VELDE**
19-1033

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-8-2019 [1]

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

NO RULING.

The court is in receipt of (a) Defendant/Third-Party Plaintiff IRZ Consulting, LLC's status report; and (b) Third-Party Defendant John Fazio dba Fazio Engineering status report. Docs. #328; #330. Fact and expert discovery are ongoing and will conclude October 1, 2022 and February 15, 2023, respectively. The parties are in the process of scheduling depositions. After discovery closes, the parties anticipate that the case will be ready to be transferred to District Court for a jury trial. This matter will be called as scheduled.

5. 18-11651-B-11 **IN RE: GREGORY TE VELDE**
19-1037

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

NO RULING.

The court previously ordered Plaintiff IRZ Consulting to file a status conference statement not later than February 16, 2022. Doc. #125. No such status conference statement was filed. However, Plaintiff filed a status report on February 16, 2022 in related Case No. 19-1033 (matters ##3-4 above). This matter will be called as scheduled to inquire about the current status of this case.

6. 20-11296-B-7 **IN RE: KYLE/DEANNA MAURIN**
20-1044

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
7-10-2020 [1]

KAPITUS SERVICING, INC. V.
MAURIN
MICHAEL MYERS/ATTY. FOR PL.
CONT'D TO 3/9/22 PER ECF ORDER #81

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

DISPOSITION: Continued to March 9, 2022 at 11:00 a.m.

NO ORDER REQUIRED.

The parties reached an agreement to settle the adversary proceeding and need additional time to finalize the settlement agreement. As such, the parties stipulated to continue the pre-trial conference to March 9, 2022. Doc. #79. The court approved the stipulation on February 10, 2022 and continued the pre-trial conference to March 9, 2022 at 11:00 a.m. Doc. #81. The deadline for Plaintiff to file its pre-trial statement is extended through and including February 23, 2022, and the deadline for Defendant to do the same is extended through March 2, 2022. *Id.*