



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Wednesday, March 1, 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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To appear remotely for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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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. [22-11303](#)-B-13 **IN RE: NICOLE GUERRA**
[MHM-1](#)

MOTION TO DISMISS CASE
1-20-2023 [[37](#)]

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

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

DISPOSITION: Continued to March 29, 2023 at 9:30 a.m.

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) and (c)(6) for unreasonable delay by the debtor that is prejudicial to creditors because Debtor has failed to make all payments due under the plan. Doc. #37. As of January 20, 2023, payments are delinquent in the amount of \$4,938.55. *Id.* Additional monthly payments of \$2,387.71 became due on January 25 and February 25, 2023. *Id.*

Nicole Ranae Guerra ("Debtor") timely opposed and filed a modified plan to address the issues raised in Trustee's motion. Doc. #43. The modified plan is set for hearing on March 29, 2023. Accordingly, this motion will be CONTINUED to March 29, 2023 at 9:30 a.m. to be heard in connection with the motion to confirm plan.

2. [22-12012](#)-B-13 **IN RE: REYNALDO RODRIGUEZ**
[AP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MCLP ASSET
COMPANY, INC.
1-16-2023 [[32](#)]

MCLP ASSET COMPANY, INC./MV
WENDY LOCKE/ATTY. FOR MV.
DISMISSED 2/15/23

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

The court issued an order dismissing this case on February 15, 2023. Doc. #66. Accordingly, the objection to confirmation of the plan will be OVERRULED AS MOOT.

3. [22-12012](#)-B-13 **IN RE: REYNALDO RODRIGUEZ**
[AP-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
RELIEF FROM CO-DEBTOR STAY
1-31-2023 [[39](#)]

MCLP ASSET COMPANY, INC./MV
WENDY LOCKE/ATTY. FOR MV.
DISMISSED 2/15/23

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot in part; granted in part.

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

MCLP Asset Company, Inc. ("Movant"), seeks *in rem* relief from the automatic stay under 11 U.S.C. §§ 362(d)(1), (d)(4), and 1301(a) with respect to real property located at 41887 Road 126, Oroquieta, CA 93647-2003 ("Property"). Doc. #39. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

Reynaldo G. Rodriguez ("Debtor") did not oppose. Since Debtor is *pro se*, this matter will be called and proceed as scheduled. This motion will be DENIED AS MOOT IN PART as to §§ 362(d)(1) and 1301(a) because this case was dismissed on February 15, 2023 and the automatic stay has already terminated by operation of law. Doc. #65; §§ 362(c)(2)(B), 1301(a)(2). With respect to § 362(d)(4), this motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the 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 Systems, 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.

An order entered under § 362(d)(4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

To obtain relief under § 362(d)(4), Movant must show and the court must affirmatively find the following three elements: (1) the debtor's bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud creditors, and (3) the scheme must have involved either the transfer of some interest in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

A scheme is an intentional construct - it does not happen by misadventure or negligence. *In re Duncan & Forbes Dev., Inc.*, 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). A § 362(d)(4)(A) scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." *Id.* It is not common to have direct evidence of an artful plot or plan to deceive others - the court must infer the existence and contents of a scheme from circumstantial evidence. *Id.* Movant must present evidence sufficient for the trier of fact to infer the existence and content of the scheme. *Id.*

Here, Debtor and Beatriz Rodriguez (collectively "Borrowers") executed a promissory note in the sum of \$220,000 in favor of World Savings Bank, FSB, which was secured by a recorded deed of trust encumbering real property at 41887 Road 126, Orosi, CA 93647-2003 ("Property"). *Exs. 1-2, Docs. ##43-44.* The loan was modified in 2009. *Ex. 3, id.* Borrowers defaulted under the loan in April 2021 and it was scheduled for foreclosure sale on February 17, 2022. *Exs. 4-5, id.*

On February 4, 2022, Debtors executed an unauthorized grant deed purporting to transfer the Property to themselves and two others, Cristino Pineda and Rafael R. Garcia, as a "gift" for no consideration. *Ex. 6, id.*

On September 19, 2022, Cristino Pineda filed a chapter 13 bankruptcy in the Central District of California, Case No. 22-15089, which was dismissed on November 7, 2022.¹

Debtor filed this case on November 23, 2022. Doc. #1. Therefore, it appears that Debtor filed this petition as a scheme to delay, hinder, or defraud Movant by transferring part of an ownership interest in Property without Movant's consent and then filing multiple bankruptcies to stay proceedings against Property.

This matter will be called as scheduled. The court intends to DENY AS MOOT IN PART the motion with respect to §§ 362(d)(1) and 1301(a), but GRANT IN PART this motion under § 362(d)(4). The court intends to find the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part

ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval and multiple bankruptcy filing affecting such real property. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order.

The 14-day stay of Rule 4001(a) (3) will be ordered waived because Debtor has transferred part of an ownership interest in Property without Movant's consent and multiple bankruptcies have been filed purporting to affect Property.

¹ The court may take judicial notice *sua sponte* of information published on government websites. Fed. R. Evid. 201(c) (1); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

4. [23-10215](#)-B-13 **IN RE: ALICE CAMERON**
[DMG-1](#)

MOTION TO EXTEND AUTOMATIC STAY
2-14-2023 [\[11\]](#)

ALICE CAMERON/MV
D. GARDNER/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.

Alice Diana Cameron ("Debtor") requests an order extending the automatic stay under 11 U.S.C. § 362(c) (3). Doc. #11.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f) (2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will 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 that was dismissed, then the automatic stay under subsection (a) shall terminate with

respect to the debtor on the 30th day after the latter case is filed. Debtor had one case pending within the preceding one-year period that was dismissed: Case No. 21-10928-A-13. That case was filed on April 14, 2021 and dismissed on October 7, 2022 for failure to make all payments due under the confirmed chapter 13 plan.² This case was filed on February 4, 2023. Doc. #1. The automatic stay will expire on March 6, 2023.

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 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. § 362(c) (3) (C). 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)).

In this case, the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith as to all creditors because Debtor has more than one previous case under chapter 13 that was pending within the preceding one-year period and Debtor failed to perform the terms of a confirmed plan. § 362(c) (3) (C) (i) (II) (cc), (c) (3) (C) (i) (III).

Debtor declares that the previous case was dismissed because Debtor's family members were dependent on Debtor's support, which hampered Debtor from making plan payments. Doc. #13. Additionally, Debtor has reduced monthly expenses on utilities by upgrading lights, windows, and a door, and has reduced monthly pharmaceutical expenses with insurance. *Id.* Debtor is no longer financially assisting Debtor's grandson or any other family members and is receiving assistance from Debtor's daughters in managing monthly expenses to stay within Debtor's budget. *Id.* Debtors further declare that this case was filed in good faith, and Debtor is proposing a plan with a 100% dividend to general, unsecured creditors. *Id.*

The *Chapter 13 Plan* dated February 17, 2023 provides for 60 monthly payments of \$4,500.00. Doc. #16. Debtor's *Schedules I* and *J* indicate that Debtor receives \$7,633.63 in monthly net income, which is sufficient for Debtor to afford the proposed plan payment. Doc. #17.

In contrast to the previous case, Debtor was receiving only \$4,614.02 in monthly net income, so Debtor's financial condition has materially

changed since the last case was filed. See, Bankr. Case No. 21-10928, Doc. #66.

Based on the moving papers and the record, the presumption appears to have been rebutted by clear and convincing evidence because Debtor's financial condition and circumstances have materially changed.

Debtor's petition appears to have been filed in good faith and the proposed plan does appear to be feasible.

This matter will be called and proceed as scheduled. In the absence of opposition at the hearing, this motion may be GRANTED. 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).

² Debtor also has had two other cases: Case No. 19-12515 filed on June 13, 2019 and dismissed on May 15, 2020 for failure to make plan payments, and Case No. 19-10030 filed on January 8, 2019 and dismissed on May 10, 2019 for failure to file all applicable tax returns.

5. [22-11617](#)-B-13 **IN RE: JOHNNY COELHO LOPES AND KATHLEEN LOPES**
[SL-1](#)

MOTION TO AVOID LIEN OF FIRST NATIONAL BANK OF OMAHA
1-26-2023 [\[21\]](#)

KATHLEEN LOPES/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Johnny Coelho Lopes and Kathleen Renee Lopes (collectively "Debtors") move to avoid a judicial in favor of First National Bank of Omaha ("Creditor") in the sum of \$9,843.01 and encumbering residential real property located at 1260 Serr Court, Tulare, CA 93274 ("Property").³

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

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

Here, a judgment lien was entered against joint debtor Johnny C. Lopes in favor of Creditor in the amount of \$9,843.01 on July 29, 2021. *Ex. D*, Doc. #24. The abstract of judgment was issued on September 15, 2021 and was recorded in Tulare County on October 7, 2021. *Id.* That lien attached to Debtors' interest in Property. *Id.*; Doc. #23.

As of the petition date, Property had an approximate value of \$596,300.00. *Id.*; *Am. Sched. A/B*, Doc. #16. Property was encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount of \$400,086.00, and a second deed of trust in favor of Tulare County Credit Union in the amount of \$33,527.00. *Am. Sched. D*, *id.* Debtors claimed a homestead exemption in Property in the amount of \$300,000.00 pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Am. Sched. C*, *id.*

Strict application of the § 522(f)(2) formula with respect to Creditor's lien is as follows:

Amount of judgment lien	\$9,843.01
Total amount of unavoidable liens	+ \$433,613.00
Debtors' claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$743,456.01
Debtors' claimed value of interest absent liens	- \$596,300.00
Extent lien impairs exemption	= \$147,156.01

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	\$596,300.00
Total amount of unavoidable liens	- \$433,613.00
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$137,313.00)
Creditor's judicial lien	- \$9,843.01
Extent Debtors' exemption impaired	= (\$147,156.01)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall state that the lien is avoided from the subject Property only and include a copy of the abstract of judgment attached as an exhibit.

³ Debtors complied with Fed. R. Bankr. P. 7004(h) and (i) by serving Creditor via certified mail directed to the attention of an officer authorized to accept service. Doc. #25.

6. [22-11721](#)-B-13 **IN RE: INTHANONG CHOUNRAMANY**
[PLG-2](#)

MOTION TO CONFIRM PLAN
1-6-2023 [\[21\]](#)

INTHANONG CHOUNRAMANY/MV
RABIN POURNAZARIAN/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.

Inthanong Chounramany ("Debtor") seeks confirmation of the *First Amended Chapter 13 Plan* dated January 6, 2023 ("Plan"). Doc. #23. The 100% dividend Plan proposes that payments will be "as received through December 2022[,]" which appears to be the initial \$1,704.00/month; starting January 2023, the payment will be \$0.00/month; and starting February 2023, the payment will be \$1,785.00/month until the 60th month. Doc. #23. Debtor's *Schedules I & J* indicate that Debtor receives \$3,195.59 in monthly net income, which is sufficient to fund the Plan. Doc. #1. No party in interest timely filed written opposition.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592

(9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and shall reference the plan by the date it was filed.

7. [22-11934](#)-B-13 **IN RE: JOSE HERNANDEZ**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
2-14-2023 [\[31\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 29, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Jose Benedicto Hernandez ("Debtor") on November 14, 2022 because (1) Debtor will not able to make all payments under the plan and comply with the plan [11 U.S.C. § 1325(a)(6)], (2) the plan fails to provide for the value as of the effective date of the plan to be distributed on account of each allowed unsecured claim in at least the amount it would be paid if the case was liquidated under chapter 7 [§ 1325(a)(4)], (3) the plan does not provide for all of Debtor's projected disposable income to be applied to unsecured creditors under the plan, and (4) the plan provides for payments to creditors for a period longer than 5 years [§ 1322(d)]. Doc. #31.

Nationstar Mortgage LLC ("Creditor") filed a separate objection using the same Docket Control Number as Trustee. Doc. #36. Creditor's objection will be OVERRULED for failure to comply with LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3), which require every matter to use a separate Docket Control Number.

Creditor also filed a reply joining Trustee's objection because the plan impermissibly modifies Creditor's claim in violation of 11 U.S.C. § 1322(b)(2). Doc. #40.

This objection will be CONTINUED to March 29, 2023 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, the Debtor shall file and serve a written response not later than March 15, 2023. 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 22, 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 22, 2023. If the Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without a further hearing.

8. [22-11935](#)-B-13 **IN RE: SUSAN QUINVILLE AND LOARINA DOMENA-QUINVILLE**
[JRL-1](#)

MOTION TO DISMISS CASE
1-30-2023 [\[27\]](#)

TRUSTEES OF THE GRANT F. SCHREIBER TRUST/MV
BENNY BARCO/ATTY. FOR DBT.
JERRY LOWE/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court entered an order dismissing this case on February 23, 2023. Doc. #48. Accordingly, the creditor's motion to dismiss will be DENIED AS MOOT.

9. [22-11935](#)-B-13 **IN RE: SUSAN QUINVILLE AND LOARINA DOMENA-QUINVILLE**
[JRL-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEES OF THE GRANT
F. SCHREIBER TRUST
1-30-2023 [[30](#)]

TRUSTEES OF THE GRANT F. SCHREIBER TRUST/MV
BENNY BARCO/ATTY. FOR DBT.
JERRY LOWE/ATTY. FOR MV.

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 23, 2023.
Doc. #48. Accordingly, the creditor's objection to confirmation of the
plan will be OVERRULED AS MOOT.

10. [22-11935](#)-B-13 **IN RE: SUSAN QUINVILLE AND LOARINA DOMENA-QUINVILLE**
[MHM-2](#)

MOTION TO DISMISS CASE
1-27-2023 [[23](#)]

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

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court entered an order dismissing this case on February 23, 2023.
Doc. #48. Accordingly, the chapter 13 trustee's motion to dismiss will
be DENIED AS MOOT.

11. [22-11546](#)-B-13 IN RE: MIGUEL PARRAS
[MHM-1](#)

MOTION TO DISMISS CASE
1-23-2023 [\[25\]](#)

MICHAEL MEYER/MV
FLOR DE MARIA TATAJE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and failure to confirm a chapter 13 plan. Doc #25. Miguel Angel Parras ("Debtor") did not oppose.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

The record shows that there has been unreasonable delay by Debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) because Debtor failed to confirm a plan. Debtor did not oppose.

In addition, Trustee has reviewed the schedules and determined that Debtor's significant assets—vehicles and real property—are over encumbered and are of no benefit to the estate. Doc. #27. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion, is in the best interests of creditors and the estate.

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

12. [22-11546](#)-B-13 **IN RE: MIGUEL PARRAS**
[MHM-2](#)

MOTION TO DISMISS CASE
1-24-2023 [[29](#)]

MICHAEL MEYER/MV
FLOR DE MARIA TATAJE/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court intends to grant chapter 13 trustee Michael H. Meyer's motion to dismiss in matter #11 above. See, MHM-1. Accordingly, this motion to dismiss will be DENIED AS MOOT because the case will be dismissed in matter #11 above.

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

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

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

NO RULING.

14. [22-11969](#)-B-13 **IN RE: KARLA GARCIA**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
12-29-2022 [\[29\]](#)

MICHAEL MEYER/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The court will issue an order.

This motion was originally heard on February 1, 2023 and continued to March 1, 2023. Doc. #33.

Chapter 13 trustee Michael H. Meyer ("Trustee") asked the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors by failing to appear at the scheduled 341 meeting of creditors, failure to provide documents to the trustee, failure to file official forms, a complete chapter 13 plan, and complete and accurate schedules. Doc #29.

Debtor did not file written opposition, but Debtor did appear at the hearing. Doc. #33.

The court continued the motion so Debtor could attend the rescheduled meeting of creditors on February 21, 2023. Doc. #33; #35.

Trustee filed a supplement indicating that Debtor failed to appear at the meeting on February 21, 2023 and as of February 22, 2023, has not provided any documents to Trustee's office. Doc. #46.

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

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, failed to provide required documentation to the trustee, failed to appear at the 341 meeting of creditors and rescheduled meeting of creditors, failed to file a complete Plan, failed to file all tax returns as required by 11 U.S.C. § 1308(a), failed to provide proof of income for the last 6 months as required by 11 U.S.C. § 521(a)(1)(B)(iv), and failed to complete the Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment (11 U.S.C § 521). Docs. #29; #31.

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.

In addition, Trustee has reviewed the schedules and determined Debtor's significant assets—vehicles and real property—are over encumbered, and the remaining assets are exempted. Doc. #29. Therefore, dismissal, rather than conversion, serves the interests of creditors and the estate.

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

15. [22-12070](#)-B-13 **IN RE: MICHELLE ONTIVEROS**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
2-6-2023 [[16](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Debtor Michelle Lynn Ontiveros filed a modified plan on February 13, 2023, which is set for hearing on March 15, 2023. Docs. ##21-22. Accordingly, chapter 13 trustee Michael H. Meyer's objection to confirmation of the original plan will be OVERRULED AS MOOT.

16. [20-11186](#)-B-13 **IN RE: JOSE RECILLAS**
[MHM-1](#)

MOTION TO DISMISS CASE
1-19-2023 [[71](#)]

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

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(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 #71. Jose C. Recillas ("Debtor") did not oppose.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the 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). 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay and failure to make all payments under the plan, which constitutes as a material default under § 1307(c)(6).

The record shows that there has been unreasonable delay by Debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1) and (c)(6)) because Debtor is delinquent \$3,192.55 as of January 19, 2023. Doc. #73. Additional payments of \$1,385.00 will become due on January 25 and February 25, 2023.

In addition, Trustee has reviewed the schedules and determined that Debtor's significant assets—vehicles and real property—are over encumbered and are of no benefit to the estate. Doc. #71. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion, is in the best interests of creditors and the estate.

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

17. [22-12086](#)-B-13 **IN RE: HILDA CAMPOS**
[MHM-2](#)

MOTION TO DISMISS CASE
1-30-2023 [[21](#)]

MICHAEL MEYER/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
DISMISSED 2/2/23

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

DISPOSITION: Denied 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 motion to dismiss will be DENIED
AS MOOT.

11:00 AM

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

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

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

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

DISPOSITION: Scheduling conference concluded.

ORDER: The court will issue an order.

On January 24, 2023, the parties stipulated to dismiss without prejudice their pending motions for summary judgment (TAT-3 and summary adjudication (FW-6). Docs. ##409-10. Accordingly, this continued scheduling conference is concluded and will be taken off calendar.

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

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

NATERA V. BARNES ET AL
JACOB EATON/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Status conference concluded.

ORDER: The court will issue an order.

On January 24, 2023, the parties stipulated to dismiss without prejudice their pending motions for summary judgment (TAT-3 and summary adjudication (FW-6). Docs. ##409-10. Accordingly, this continued status conference is concluded and will be taken off calendar.

3. [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.
KAREL ROCHA/ATTY. FOR PL.

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

DISPOSITION: Continued to April 19, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

This status conference was briefly continued beyond the deadline for defendant Scott Finstein to file an answer. No such answer was filed. The status conference will be further CONTINUED to April 19, 2023 at 11:00 a.m. Plaintiff National Union Fire Insurance is directed to seek entry of default.