



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Wednesday, March 8, 2023
Department B – 510 19th Street
Bakersfield, California**

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be as instructed below.

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) via **ZOOMGOV VIDEO**, (2) via **ZOOMGOV TELEPHONE**, and (3) 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.
2. You are required to give the court 24 hours advance notice. Review the court's [Zoom Policies and Procedures](#) for these and additional instructions.
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Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screenshots" or other audio or visual copying of a hearing, is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

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.

9:00 AM

1. [22-12102](#)-B-13 **IN RE: ALAN BABB**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
1-27-2023 [[16](#)]

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

The court intends to dismiss this case in matter #2 below. MHM-2.
Accordingly, the trustee's objection to confirmation will be OVERRULED
AS MOOT because the case is being dismissed in matter #2 below.

2. [22-12102](#)-B-13 **IN RE: ALAN BABB**
[MHM-2](#)

MOTION TO DISMISS CASE
1-27-2023 [[20](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors and failing to commence making payments due under the plan. Doc #20. On February 22, 2023, Trustee supplemented the motion to include failure to cooperate with the trustee as another cause for dismissal. Docs. ##28-29. Alan Lee Babb ("Debtor") did not oppose.

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

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

creditors, the 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) and (c)(4) for unreasonable delay by debtor that is prejudicial to creditors, failure to commence making payments due under the plan, and failure to cooperate with Trustee.

The record shows Debtor is delinquent in the amount of \$2,700.00. Doc. #22. Before this hearing, another payment in that same amount will also come due. *Id.*

Additionally, Trustee's supplement to the motion indicates that Debtor appeared at the February 21, 2023 meeting of creditors. Doc. #29. Debtor had assistance from an unidentified woman who signed him into the Zoom meeting and set up his device for testifying. When asking Debtor questions, Trustee's attorney could clearly hear the woman talking to Debtor, who would listen to her response before answering. Although not in view of the camera, Trustee's attorney could see her shadow casting on and behind Debtor. Trustee asked the woman to show herself on camera and identify herself, but Debtor claimed that he was alone and someone walked by outside of his window. *Id.* Questioning continued, but Trustee believed that answers to the questions were now being written down on a piece of paper and held up for Debtor to read and answer back. Trustee's attorney could hear paper being shuffled and saw a reflection of a shadow of the woman casting on Debtor. Debtor would look past the camera and was clearly looking at something on the other side of the computer. Trustee again asked the woman to show and identify herself, but Debtor again claimed to be alone. As a result, Trustee continued the meeting to March 21, 2023 on grounds that Debtor was not providing honest answers to Trustee's questioning.

Trustee has reviewed the schedules and determined that Debtor's significant assets are encumbered or exempted in their entirety. Docs. #20; #22. This case has a liquidation value of \$1,068.75 after trustee compensation, which is comprised of the value of Debtor's bank account and 2022 tax refund. Doc. #22. Since no non-exempt equity remains that could be liquidated for the benefit of the estate, dismissal, rather than conversion, serves the interests of creditors and the estate.

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

3. [23-10119](#)-B-13 **IN RE: JOSHUA MOORE**
[MHM-1](#)

MOTION TO DISMISS CASE
1-27-2023 [\[6\]](#)

MICHAEL MEYER/MV
DISMISSED 2/6/23

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 6, 2023. Doc. #12. Accordingly, the trustee's motion to dismiss will be DENIED AS MOOT.

4. [22-12126](#)-B-13 **IN RE: HERSAL/KIMBERLY TILLET**
[CJK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC
1-31-2023 [\[20\]](#)

LAKEVIEW LOAN SERVICING, LLC/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

Lakeview Loan Servicing, LLC by M&T Bank as servicer ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed on December 14, 2022 by Hersal Corbett Tillett and Kimberly Kurene Tillett (collectively "Debtors"). Doc. #20.

Though not required, Debtors filed a response with declarations and exhibits. Docs. ##23-26.

Written opposition was not required and may be presented at the hearing.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults except the Debtors. 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.

Creditor objects under 11 U.S.C. §§ 1322(b)(2), (b)(5), and 1325 because the plan fails to cure \$1,508.31 in pre-petition arrears on its claim secured by Debtors' principal residence. Doc. #23. Additionally, Creditor requests to be classified under Class 1, rather than Class 4.

In response, Debtors claim that they made an electronic payment to Creditor in the amount of \$1,250.00 on December 14, 2022 and then subsequently filed bankruptcy on that same day. Doc. #26. Debtors attached a partial printout page from Debtors' bank statement showing that the \$1,250.00 payment was paid to Creditor on December 14, 2022. *Ex. A*, Doc. #25. Debtors indicate that monthly payments are due on the first and late on the 16th, so the payment was made prior to the 16th and should not have incurred late fees. Doc. #26. Since Creditor's Proof of Claim No. 9-1 does not reference other arrears besides those due in December 2022, and since no note was attached, Debtors suggest that the arrearage may already be cured. Doc. #24.

Additionally, section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Creditor's Class 4 claim is paid directly by Debtors. So, if confirmed, the plan terminates the automatic stay for Class 4 creditors. Plan section 3.11, Doc. #3. The Debtors may need to modify the plan to account for the arrearage if it has not already been cured because Creditor will have stay relief if the plan is confirmed. If the plan is modified, then this objection may be moot.

This matter will be called as scheduled to inquire about Creditor's position and whether it received the \$1,250.00 petition-date payment.

5. [23-10030](#)-B-13 **IN RE: CRISTY PAREDES**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
2-10-2023 [[17](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Continued to April 5, 2023 at 9:00 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 Christy Eloisa Paredes ("Debtor") on January 6, 2023 under 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #17.

This objection will be CONTINUED to April 5, 2023 at 9:00 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 22, 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 29, 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 29, 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.

6. [23-10030](#)-B-13 **IN RE: CRISTY PAREDES**
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PHH MORTGAGE CORPORATION
1-26-2023 [\[14\]](#)

PHH MORTGAGE CORPORATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
FANNY WAN/ATTY. FOR MV.

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

DISPOSITION: Continued to April 5, 2023 at 9:00 a.m.

ORDER: The court will issue an order.

PHH Mortgage Corporation ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed by Christy Eloisa Paredes ("Debtor") on January 6, 2023 under 11 U.S.C. § 1325(a)(1) because it does not promptly cure Creditor's pre-petition arrears as required by § 1322(b)(5). Doc. #14.

This objection will be CONTINUED to April 5, 2023 at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Creditor's objection to confirmation is withdrawn, the Debtor shall file and serve a written response not later than March 22, 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. Creditor shall file and serve a reply, if any, by March 29, 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 29, 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.

7. [16-10433](#)-B-13 **IN RE: DEAN GALLOWAY**
[MHM-1](#)

MOTION TO DISMISS CASE
2-14-2023 [[64](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
WITHDRAWN 2/24/23

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this motion on February 24, 2023. Doc. #68. Accordingly, this motion will be dropped and taken off calendar pursuant to the withdrawal.

8. [22-12136](#)-B-13 **IN RE: JERRY GRIDER**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK
MELLON
1-11-2023 [[21](#)]

THE BANK OF NEW YORK MELLON/MV
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This case was voluntarily converted to chapter 7 on February 28, 2023. Doc. #35. Accordingly, the creditor's objection to confirmation of the plan will be OVERRULED AS MOOT.

9. [22-12136](#)-B-13 **IN RE: JERRY GRIDER**
[MHM-2](#)

MOTION TO DISMISS CASE
2-6-2023 [[28](#)]

MICHAEL MEYER/MV

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This case was voluntarily converted to chapter 7 on February 28, 2023. Doc. #35. Accordingly, the trustee's motion to dismiss will be DENIED AS MOOT.

10. [22-10954](#)-B-13 **IN RE: CHAD GILLIES**
[MHM-2](#)

MOTION TO DISMISS CASE
2-8-2023 [[34](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Granted in part; denied in part.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay by the debtor that is prejudicial to creditors and material default with respect to a term of a confirmed plan by failing to make all payments due under the plan. Doc #34. Chad Mitchell Gillies ("Debtor") did not oppose.

Unless the Trustee's motion is withdrawn before the hearing, the motion will be GRANTED IN PART and DENIED IN PART without oral argument for cause shown, and the case will be CONVERTED TO CHAPTER 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 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) and (c)(6) for unreasonable delay that is prejudicial to creditors and material default with respect to a term of a confirmed plan.

The record shows here that there has been unreasonable delay by Debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) because Debtor materially defaulted with respect to the terms of the confirmed plan (11 U.S.C. § 1307(c)(6)) by failing to make all plan payments. Doc. #36.

Trustee has reviewed the schedules and determined that most of Debtor's significant assets are encumbered or exempted in their entirety. Doc. #34. However, this case has a liquidation value of \$61,675.59 after trustee compensation, which is comprised of the value of Debtor's real property located at 5312 Elk Run Court, guns, and funds in Debtor's bank account. Doc. #36. Since there is non-exempt equity that could be liquidated for the benefit of the estate, it appears that conversion, rather than dismissal, better serves the interests of creditors and the estate.

The Trustee's motion and supporting declaration notified Debtor and counsel that the case may be converted to Chapter 7. Mot. at 2, Doc. #34; Decl. at 2, Doc. #36.

Accordingly, the motion will be GRANTED IN PART and DENIED IN PART, and the case will be CONVERTED TO CHAPTER 7.

11. [23-10071](#)-B-13 **IN RE: PHYLLIS TIJERINA**
[MHM-1](#)

MOTION TO DISMISS CASE
1-23-2023 [\[9\]](#)

MICHAEL MEYER/MV
DISMISSED 2/3/23

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 3, 2023.
Doc. #15. Accordingly, the trustee's motion to dismiss will be DENIED
AS MOOT.

12. [23-10092](#)-B-13 **IN RE: KRYSTAL SARNA**
[MHM-1](#)

MOTION TO DISMISS CASE
1-24-2023 [\[8\]](#)

MICHAEL MEYER/MV
DISMISSED 1/31/23

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 January 31, 2023.
Doc. #15. Accordingly, the trustee's motion to dismiss will be DENIED
AS MOOT.

10:00 AM

1. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
2-10-2023 [\[832\]](#)

QL TITLING TRUST LTD/MV
LEONARD WELSH/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.

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.

QL Titling Trust, Ltd. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to two (2) 2019 579 Peterbilt Trucks ("Vehicles"). Doc. #832. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

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 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.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has missed 4 payments in the total amount of \$26,522.44, plus late fees of \$331.53. Doc. #836.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to

satisfy its claim. Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because the debtor has failed to make post-petition payments and the Vehicles are depreciating assets.

The request for attorney's fees is DENIED. Though Movant is over-secured under 11 U.S.C. § 506(b), Movant must separately file and set for hearing a motion for compensation in compliance with the LBR and Federal Rules. If Movant does, then the court will consider that motion on its merits at the appropriate time.

2. [13-14741](#)-B-7 **IN RE: JAMES LEON**
[RSB-1](#)

MOTION TO AVOID LIEN OF CITIBANK, NA
1-11-2023 [\[49\]](#)

JAMES LEON/MV
R. BELL/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, neither the original nor the amended notices contain the required language directing respondents to the pre-hearing dispositions on the court's website, or that parties appearing telephonically are required to view the pre-hearing dispositions prior to appearing at the hearing. Docs. #50; #54.

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

3. [22-11771](#)-B-7 **IN RE: JOSE/ELIZABETH GALINDO**
[RSW-1](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
1-17-2023 [\[18\]](#)

ELIZABETH GALINDO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

For motions filed on 28 days' notice, LBR 9014-1(f)(1)(B) requires the movant to notify respondents that any opposition to the motion must be in writing and filed with the court at least 14 days preceding the date of the hearing.

Here, the motion was filed and served on January 17, 2023 and set for hearing on March 8, 2023. Docs. ##18-22. January 17, 2023 is fifty (50) days before March 8, 2023. Therefore, this motion was set for hearing on 28 or more days of notice under LBR 9014-1(f)(1). Nevertheless, the notice provided:

Opposition, if any, to the granting of the motion may be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

Notice ¶¶ 1:23-26, Doc. #19. This is incorrect. Because the hearing was set on 28 days' notice, LBR 9014-1(f)(1) is applicable and the notice should have stated that written opposition was required, must be filed 14 days before the hearing, and failure to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion. Instead, the respondents were told not to file and serve written opposition even though it was necessary. Therefore, the notice was materially deficient. If the movant gives 28 days or more of notice of the hearing, there is no option to simply pretend that the motion was set for hearing on less than 28 days of notice to dispense with the court's requirement that any opposition must be in writing and filed with the court. Additionally, under LBR 9014-1(d)(3)(B)(i), the motion must include the names and addresses of the persons who must be served with such opposition.

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

4. [21-12473](#)-B-7 **IN RE: BLAIN FARMING CO., INC.**
[FW-10](#)

MOTION TO APPROVE STIPULATION WITH CITY OF VISALIA
2-7-2023 [[178](#)]

JAMES SALVEN/MV
RILEY WALTER/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order with a copy of the stipulation attached as an exhibit and shall separately file and docket the same as a stipulation.

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving a stipulation between the bankruptcy estate of Blaine Farming Co., Inc. ("Debtor"), the bankruptcy estate of World Food & Ag., Inc.¹ ("Atlas"), and the City of Visalia ("Visalia") regarding pre-petition state court litigation pending in the Tulare County Superior Court, case no. 277320 (the "State Court Action"), pursuant to Fed. R. Bankr. P. ("Rule") 9019.

Interested parties Brody Blain, Brian Blain, and Barrett Blain (collectively, the "Blains") timely filed written opposition. Doc. #185.

Visalia and Trustee replied. Docs. ##193-95; #197.

The Blains responded to Visalia's reply. Docs. ##199-201.

This motion will be called and proceed as scheduled. The court is inclined to GRANT the motion as outlined below.

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 except the Blains and Visalia to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except the Blains and Visalia are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought,

which the movant has done here as to the defaulting responding parties.

Prior to the filing of Debtor's or Atlas' bankruptcy cases, Visalia filed the State Court Action against Debtor, Atlas, and the Blains alleging that it was owed substantial funds for rents and proceeds from the sale of crops grown on city properties over a period of multiple years. Doc. #181. Visalia obtained an attachment lien in the amount of \$1,339,989.11 against the Debtor's real property located at 1240 E. Caldwell Avenue, Visalia, California ("Property"). *Id.* Debtor, in turn, filed counterclaims against Visalia alleging damages of \$550,447.79 for breach of contract, plus interest, attorney fees, and penalties per the California Prompt Pay Act. *Id.*

At the time Debtor filed bankruptcy, the State Court Action was still pending. As a result, Visalia sought and obtained relief from the automatic stay to liquidate and prosecute the State Court Action, but Visalia was not permitted to enforce any judgment. Doc. #62.

Trial in the State Court Action has been set to begin on or about March 13, 2023. Doc. #181. Trustee has analyzed the issues raised in the State Court Action, including the Debtor's counterclaim against Visalia, and concluded that the administrative expenses required to litigate the State Court Action would far outweigh any potential benefit to the creditors of the bankruptcy estate, and would significantly reduce the assets available for distribution to unsecured claims even if the Debtor prevailed on the counterclaims. *Id.* Given the factual complexities raised, Trustee believes litigation would cost at least \$50,000-100,000.00, and possibly even more. As a result, Trustee, Atlas, and Visalia stipulated to settlement of the State Court Litigation as to Debtor and Atlas. *Id.* A copy of the settlement agreement was filed as an exhibit to this motion; however, it was not separately filed and docketed as a stipulation. *See, Ex. A, Doc. #182.*

Under the terms of the stipulation, the bankruptcy trustees for Debtor and Atlas have agreed not to contest the State Court Action and stipulate to entry of default with respect to Debtor and Atlas. *Id.* The parties agree that the amount of any judgment obtained by Visalia in the State Court Action will be an allowed, general unsecured claim in each bankruptcy case. *Id.* Visalia will not have a secured claim based on its notice of attachment. *Id.*

The Blains oppose. Docs. #185. The Blains contest the nature and extent of the liability of the Debtor [and presumably Atlas] to Visalia, including offsets to the damage claims for Debtor's \$550,447.79 cross-complaint. Doc. #185. The Blains further contest Visalia's ability to "pierce the corporate veil" by imposing individual liability. *Id.* The Blains acknowledge there is a high likelihood that some or all of the relief proposed by the motion and stipulation may be granted, but filed this opposition to assure that any such order does not impair or impede their ability to protect

their individual interests by contesting the amount of Visalia's claim for damages, including by way of offsets and the Debtor's counterclaim, or contesting the claims by Visalia in its attempt to impose individual liability to any debt owed by Debtor to Visalia.

In reply, Visalia says that the stipulation preserves whatever rights the Blains may have to defend themselves in the State Court Action. Doc. #193. However, the stipulation was not intended to, nor should it be interpreted, to enhance the Blains' rights to defend themselves by allowing them to raise claims, crossclaims, or counterclaims that belong to Atlas or Debtor. *Id.* Caren L. Curtiss, Visalia's attorney, declares that the Blains, as individuals, did not file a cross-complaint against Visalia, and their general denials to the complaint in the State Court Action do not allege that they are entitled to any affirmative relief by way of an offset, nor have they designated an expert witness to offer an expert opinion on whether Debtor, Atlas, and the Blains are alter egos of each other. Doc. #194. Copies of the Blains general denials were included as exhibits. *Exs. A-C*, Doc. #195.

Trustee replies that the Blains' opposition deals with the rights of the individual defendants in the state court litigation while this stipulation pertains only to the dispute between Visalia and the bankruptcy estate. Doc. #197. The Blains are seeking to include language confirming their abilities to defend themselves in the State Court Action, which are not impeded by the stipulation. Meanwhile, Visalia is concerned the Blains are attempting to enhance their rights to defend themselves by raising claims that belong to the bankruptcy estate, or that have been already foreclosed in the course of the State Court Action. *Id.* Trustee contends, however, that if the Blains are seeking to assert claims that are property of the bankruptcy estate, the stipulation changes nothing in that the individual defendants have no authority to assert such claims regardless of whether this stipulation is approved. *Id.* To the extent that the Blains and Visalia dispute the nature of the Blains' rights to defend themselves in the State Court Action, the State Court Action court is the appropriate forum to resolve these claims, not this bankruptcy court.

The Blains respond, claiming that the proposed order approving the stipulation is intended as a de facto motion in limine to bind the hands of the state court in the pending litigation. Doc. #199. The stipulation will be used to allow Visalia to prove up its damages while shielding itself from the damage claims, credits, and offsets to which Visalia would be subject if Debtor and Atlas were still active litigants. The Blains contend three affirmative defenses will be avoided with the stipulation, so the Blains have sought to amend their answers to the complaint to more fully set forth their equitable claims and defenses, which is set for hearing on March 23, 2023.

The Blains include argument supporting their proposed amendment and then argue that Visalia should have to prove up its damages as to Debtor and Atlas because it is the source of an alleged salmonella

contamination resulting in their demise. So, the Blains request the order to be "modified in a fashion consistent with fairness, justice and due process as to the matters brought to the court's attention by the Blains." *Id.*

Since the stipulation is between Trustee, Atlas, and Debtor, the court need not rule on the effect of Debtor's entry of default in the State Court Action with respect to the Blains. The state court can make that determination, if any. To the extent the Blains oppose the motion to approve the stipulation because Debtor's default may impact the rights of the Blains in the State Court Action, such consideration is not part of the standards the court must consider when approving a stipulation. Accordingly, the Blains' objection will be OVERRULED.

As representative of the chapter 7 bankruptcy estate, Trustee has the authority to settle claims of Debtor subject to court approval. 11 U.S.C. § 323(a). On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that the Trustee has considered the *A & C Props.* and *Woodson* factors, which weigh in favor of approving the stipulation as follows:

1. Probability of success in litigation: If the issues were litigated, Trustee believes that significant amounts of attorneys' fees and costs would be incurred while, at best, only reducing the amount of Visalia's claim in the bankruptcy case. Doc. #181. Although there is a limited possibility of the estate obtaining a judgment against Visalia, Trustee believes such chance is unlikely in light of Visalia's much larger claim and the administrative expenses it would take to attempt to obtain that judgment. *Id.* The potential value of succeeding in litigation is small compared to the significant administrative expenses required to do so, which would directly reduce the amounts available to creditors. The stipulation resolves this issue by reducing the necessity for administrative expenses and eliminating the uncertainty of litigation. This factor supports approval of the settlement.

2. Collection: If the estate did obtain a judgment against Visalia, collection would likely not be an issue. However, the primary purpose of the stipulation is to avoid administrative expenses and allow Visalia to liquidate the amount of its unsecured claim in Atlas' and

Debtor's bankruptcy cases. *Id.* This factor is either neutral and inapplicable, or slightly weighs against approving the stipulation.

3. Complexity of litigation: Trustee says that the State Court Action is both factually and legally complex with strict deadlines, which necessitates a significant amount of administrative expenses to Debtor. *Id.* Specifically, Visalia's claims relate to farming operations conducting by Debtor and other parties over a period of multiple years. Similarly, litigating Debtor's counterclaims would require analysis of several years of contracts and business records between the defendants and Visalia. The parties conducted significant discovery pre-petition, exchanged extensive documents, and conducted multiple depositions, all of which would need to be analyzed. Discovery is still ongoing and expert discovery is not finalized, so such discovery would need to be completed. Although a trial has been scheduled, litigating would require significant work for pre-trial proceedings and motions, witness subpoenas, evidence preparation, the trial itself, and post-trial briefing. The stipulation resolves all of these complexities and eliminates the necessity of extraordinary administrative expenses. This factor supports approving the stipulation.

4. Paramount interests of creditors: Trustee contends the stipulation maximizes the recovery for unsecured creditors in this bankruptcy and avoids the risk that, after litigation, the estate would be significantly reduced or even administratively insolvent. The stipulation minimizes the risk to the estate by the pre-petition attachment lien. Since the stipulation eliminates potential administrative expenses, Trustee believes the stipulation is in the best interests of creditors and the estate.

The *A & C Props.* and *Woodson* factors appear to weigh in favor of approving the stipulation. Therefore, the stipulation appears to be a fair, equitable, and reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.*

The Blains' request that the order approving the stipulation be "modified in a fashion consistent with fairness, justice and due process as to the matters brought to the court's attention by the Blains" is too vague to be helpful. Doc. #199.

The stipulation compromises the claims the estates and Visalia have against each other. The Blains' opposition basically says: "we don't think the estates should settle." That decision is ultimately the court's after applying the applicable legal factors discussed above. Not the Blains. They are free to litigate against Visalia as they wish with the proper tribunal determining the scope of the State Court Action.

Accordingly, the Blains' objection will be OVERRULED and the Trustee's motion will be GRANTED. The stipulation between Debtor, Atlas, and Visalia will be approved.

This ruling is not authorizing the payment of any fees or costs associated with the stipulation. Trustee shall separately file and docket a copy of the stipulation as a stipulation. The proposed order shall attach the stipulation as an exhibit.

¹ See, Case No. 21-11448-A-7 (Bankr. E.D. Cal.).

10:30 AM

1. [23-10219](#)-B-11 IN RE: WPI WATER RESOURCES, INC.
[LKW-1](#)

MOTION TO EMPLOY LEONARD K. WELSH AS ATTORNEY(S)
2-21-2023 [[22](#)]

WPI WATER RESOURCES, INC./MV
LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

Chapter 11, subchapter V debtor-in-possession WPI Water Resources, Inc. ("Debtor") asks the court to approve Debtor's retention of Leonard K. Welsh of the Law Offices of Leonard K. Welsh ("Applicant") as general bankruptcy counsel for the estate effective as of the petition date, February 6, 2023. Doc. #22.

The application is supported by the declarations of Applicant and Amanda Jenson, the Chief Executive Officer of Debtor. Docs. ##24-25; #28.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT the motion.

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

On or about January 7, 2023, Debtor retained Applicant to file a chapter 11, subchapter V bankruptcy. Docs. ##24-25; *see also* Ex. A, Doc. #26. Applicant received a \$20,000.00 retainer from Debtor, of which \$8,968.00 was paid to Applicant for pre-petition services and expenses. Doc. #25. The remaining balance, which appears to be \$11,032.00, was deposited into a client trust account for payment of future fees and expenses. *Id.* The bankruptcy case was filed on February 6, 2023. Doc. #1. Debtor now seeks to authorize Applicant's employment.

11 U.S.C. § 1184 gives the subchapter V debtor all rights, except the right to compensation under § 330, and powers of a trustee serving under this chapter, including operating the business of the debtor, and requires it to perform all functions and duties of a trustee, except those specified in § 1106(a)(2), (3), or (4).

Under 11 U.S.C. § 327, a professional person such as an attorney can be employed by the estate with the court's approval if the proposed professional does not hold or represent an interest adverse to the estate and is "disinterested."

Applicant has advised Debtor of his professional and occasional social interaction with representatives of the Office of the United States Trustee ("UST"). Docs. ##24-25. Applicant was the standing chapter 12 trustee for the for the Eastern District of California Bankruptcy Court, Fresno Division, during which time he was appointed to serve as chapter 12 trustee and supervised by the UST in the course of such appointment. *Id.*

Additionally, some of Debtor's creditors—specifically, the U.S. Small Business Administration, Tulare County tax collector, and American Express—are those regularly listed in other cases by Applicant. Doc. #25. Applicant claims to have no interests or represents no interest adverse to Debtor or the estate except for Applicant's representation of Matthew McDonald ("Mr. McDonald") in chapter 7 case no. 23-10227-B-7 (Bankr. E.D. Cal.), who is an officer of Debtor and holds a 27% interest in Debtor, and Big Dog Drilling, Inc. ("Big Dog") in chapter 7 case no. 23-10226-A-7 (Bankr. E.D. Cal.), who is an affiliate of Debtor. *Id.*

Applicant's supplemental declaration indicates that Mr. McDonald is also a general unsecured creditor of Debtor. Doc. #28. However, Applicant contends that he is not precluded from representing a debtor in a chapter 11 case "solely because of such person's employment by or representation of a creditor unless . . . there is an actual conflict of interest." *Id.*, citing § 327(c). Applicant does not believe any disqualifying conflict of interest exists because administration of Mr. McDonald's chapter 7 case is vested with the chapter 7 trustee and not Mr. McDonald. *Id.* Applicant thus contends that he can cooperate with the chapter 7 trustee as required by law without prejudicing Debtor or its chapter 11 estate. However, Applicant agrees to withdraw as Mr. McDonald's attorney if an actual, disqualifying conflict of interest arises. *Id.*

The disqualification of an applicant also requires a creditor to object or the U.S. Trustee. Though the court can raise the issue (see § 105(a)), it appears that with some additional information, the conflict issue, to the extent there is one, can be resolved. Applicant's declaration contains a verified statement disclosing potential conflicts of interest pursuant to LBR 2014-1(a), which requires information about whether there is any connection to the debtor, creditors, or any party in interest, their respective attorneys, accountants, or the UST, or any employee of the UST. Though the evidence may support finding that Applicant neither holds nor represents interests adverse to the estate and is a disinterested person within the meaning of 11 U.S.C. § 101(14), the court is concerned whether Mr. McDonald has provided informed, written consent

to the potential conflict. While true that Mr. McDonald's bankruptcy estate vests in the chapter 7 trustee resulting in no disqualifying conflict of interest, Mr. McDonald's status as a creditor of Debtor suggests that the representation of the Debtor may be "directly adverse" to Mr. McDonald's interest and vice versa. At a minimum, Applicant's representation of Mr. McDonald or Debtor may be materially limited by Applicant's responsibilities to the other because Applicant has a responsibility to both Mr. McDonald and Debtor.

Cal. R. Prof'l Conduct ("RPC") 1.7 provides:

(a) A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.

(b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person, or by the lawyer's own interests.

(c) Even when a significant risk requiring a lawyer to comply with paragraph (b) is not present, a lawyer shall not represent a client without written disclosure of the relationship to the client and compliance with paragraph (d) where:

(1) the lawyer has, or knows that another lawyer in the lawyer's firm has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same manner.

. . .

(d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), and (c), and:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law; and

(3) the representation does not involve the assertion of a claim by one client against another client represented in the same litigation or other proceeding before a tribunal.

(e) For purposes of this rule, "matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons.

RPC 1.7(a)-(e) (asterisks omitted).

Here, Mr. McDonald's bankruptcy case was filed one day after this case. See Case No. 23-10219 (Bankr. E.D. Cal.), Doc. #1. It is still pending and discharge has not yet been entered, so both Mr. McDonald and Debtor are current clients of Applicant. While Applicant may be permitted to represent both clients concurrently because Applicant reasonably believes that he will be able to provide competent and diligent representation to each client, the representation is not prohibited by law, and the representation does not appear to involve an assertion of a claim by one client against the other (notwithstanding the discharge of one client's debt owed to the other client), RPC 1.7(d) requires compliance with subparagraphs (a) through (c). RPC 1.7(a)-(b) independently require informed written consent, and RPC 1.7(c)-(d), require written disclosure and informed, written consent through the provision in (d) incorporating subparagraphs (a) and (b). The court notes that Mr. McDonald was served with this motion and the supporting documents, so he appears to at least have written disclosure. Doc. #27. The court will inquire at the hearing about whether Debtor and Mr. McDonald have executed statements of informed, written consent.

Lastly, Applicant requests the employment to be effective as of the petition date: February 6, 2023. LBR 2014-1(a) provides that an application for an order approval employment pursuant to Fed. R. Bankr. P. 2014(a) shall be presumed to relate back to the later of 30 days before the filing of the application or the order for relief. The order for relief coincides with the petition date, so February 6, 2023 will be the effective date under LBR 2014-1(b)(1).

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. The court will also inquire whether Mr. McDonald and Debtor have provided their informed, written consent to the concurrent representation.

11:00 AM

1. [22-11914](#)-B-7 **IN RE: DAVID JACKSON**
[23-1002](#) [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
2-6-2023 [[37](#)]

JACKSON, JR. V. ALLISON ET AL

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Second and Third Amended Complaints stricken;
status conference dropped from calendar.

ORDER: The court will issue an order.

The court notes debtor David Anthony Jackson, Jr. ("Plaintiff"), has filed First, Second, and Third Amended Complaints. Docs. #6; #10; #37. Fed. R. Civ. P. 15(a)(1), *as incorporated by* Fed. R. Bankr. P. 7015, allows a party to amend its pleading once as a matter of course. All other amendments require either the opposing party's written consent or the court's leave. Fed. R. Civ. P. 15(a)(2). Here, Plaintiff neither requested leave, nor obtained the opposing parties' written consent, to file the Second or Third Amended Complaints. Docs. #10; #37. Therefore, the Second and Third Amended Complaints will be STRICKEN.

The court intends to dismiss this adversary proceeding in matter #2 below. Accordingly, the status conference will be dropped and taken off calendar. This adversary proceeding may be administratively closed when appropriate.

2. [22-11914](#)-B-7 **IN RE: DAVID JACKSON**
[23-1002](#) [CAG-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
2-6-2023 [[39](#)]

JACKSON, JR. V. ALLISON ET AL
ROB BONTA/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will be called as scheduled.

DISPOSITION: Granted.

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

Kathleen Allison ("Defendant") moves to dismiss this adversary complaint for failure to state a claim and lack of subject-matter jurisdiction pursuant to Federal Rule of Civil Procedure ("Civ. Rule") 12(b), *as incorporated by* Federal Rule of Bankruptcy Procedure ("Rule") 7012(b). Doc. #39.

Debtor David Anthony Jackson, Jr. ("Plaintiff"), responded. Docs. #40; #42.

This matter will be called as scheduled because Plaintiff is *pro se*. The court intends to GRANT this motion and DISMISS THE ADVERSARY PROCEEDING.

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.

PROCEDURAL ISSUES

As an informative matter, the motion does not procedurally comply with the local rules.

First, LBR 7005-1 requires attorneys to prove service using the *Official Certificate of Service Form*, EDC 007-005. Here, no EDC 007-005 was used. Doc. #39. An official matrix from the clerk of the court is not necessary because fewer than six parties were served, but the official EDC form is still required.²

Second, LBR 9014-1(d)(1) requires every motion or other request for relief to be comprised of a motion, notice, evidence, and a certificate of service. Here, the only document filed consists of a motion, notice of hearing, memorandum of points and authorities, and a certificate of service. Each of these documents must be filed separately. LBR 9004-2(c)(1), (e)(1). However, the motion and memorandum of points and authorities may be combined into a single document provided that it does not exceed six pages in length. LBR 9014-1(d)(4).

Third, LBR 9014-1(d)(3)(B)(i) requires the notice of hearing to include the names and addresses of persons who must be served with any opposition. Here, the notice omitted the names and addresses to whom opposition must be served.

Typically, these procedural deficiencies would result in denial of the motion without prejudice. However, because this court clearly lacks subject-matter jurisdiction and Plaintiff has undoubtedly failed to state a claim upon which relief can be granted, denial in this instance would unduly delay the efficient resolution of this adversary proceeding. Accordingly, the court will exercise its power under LBR 1001-1(f) to *sua sponte* suspend the above local rules in this instance

only. Defendant's counsel is advised to review the local rules and ensure procedural compliance in subsequent matters.

BACKGROUND

In 2010, Plaintiff was found guilty of second-degree murder by a jury for killing his girlfriend's eighteen-month-old daughter by throwing her against a wall. *Jackson v. Long*, 2018 WL 11353753 at *1 (C.D. Cal., June 4, 2018). Plaintiff was unsuccessful in challenging his conviction through direct appeal and through a petition for writ of habeas corpus. *Id.* at **1-2.

So, Plaintiff filed chapter 7 bankruptcy and this adversary proceeding to "avoid" his criminal conviction on grounds that it is an "unenforceable contract" resulting in an illegal "judicial lien." Docs. #1; #6; #10; #37.

Defendant timely moved to dismiss this case pursuant to Civ. Rule 12(b) for lack of subject-matter jurisdiction and failure to state a claim upon which relief may be granted. Doc. #39. Plaintiff responded. Docs. #40; #42.

CONTENTIONS

Plaintiff argues his murder indictment and subsequent conviction in San Bernardino Superior Court constitute an "Executory Contract" because they involved two parties and bore a case or registration number. First, Plaintiff argues that the "contract" was formed without his knowledge or consent, so it cannot be enforced. Second, the two parties to this purported contract were himself and "THE PEOPLE OF THE STATE OF CALIFORNIA," which is not registered with the Secretary of State as a corporation, and therefore is not authorized to conduct business, says Plaintiff.

On this basis, Plaintiff prays for (1) recall of his sentence, conviction, and all orders arising from the "illegal contract" (indictment and/or conviction) as void, (2) recall of Plaintiff's "ENTIRE criminal conviction and ENTIRE record, as logically all such actions were also based on illegally formed contracts"; (3) eradication of all records, debts, and created indemnities from all illegal contracts; (4) "ALL proceeds made from the sale of the Surety Bond(s) and other GSA bonds created from the illegally formed contract"; (5) a court order for the U.S. Marshalls to retrieve Plaintiff from the California Correctional Institute Tehachapi and return Plaintiff to his place of residence; and (6) "ALL mutual bond(s) funds be removed from the open market and proceeds from these bonds returned."

Defendant moves to dismiss this case under Civ. Rule 12(b) for failure to state a claim and lack of subject matter jurisdiction. Doc. #39. Bankruptcy courts lack jurisdiction to consider Plaintiff's claims and

this court does not have the power to release Plaintiff from prison, so the complaint must be dismissed. *Id.*

In response, Plaintiff acknowledges that bankruptcy courts are units of the district court but insists this adversary proceeding arises from a bankruptcy case, so jurisdiction is proper. Docs. #40; #42. Since the defendants were listed in the bankruptcy case and did not attend the meeting of creditors, Plaintiff asserts that all defendants have "conceded in silence" to the claims in this adversary proceeding. *Id.*

Citing to Cal. Civ. Code § 1608, Plaintiff argues that his chapter 7 discharge applies to the illegally formed "executory contract" (his criminal indictment and/or conviction) between himself and the defendants, so it is "unenforceable and subject to voidance in its entirety" and "there CANNOT therefore be any legitimate opposition posed to defend the unenforceable contract in any manner and ALL Courts must not under any circumstances entertain opposition and must void in totality the entire contract and ALL subsequent actions taken upon said contract unequivocally." *Id.* at 7 (emphasis in original). As evidence, Plaintiff attached a copy of his chapter 7 discharge. Doc. #41. Notably, the discharge informs that some debts are not discharged, such as debts for taxes, fines, penalties, forfeitures, or criminal restitution obligations. Moreover, the discharge does not apply to criminal indictments or convictions. In conclusion, Plaintiff requests rejection of Defendant's motion to dismiss and asks to move this case to "immediate adjudication."

DISCUSSION

Under Civ. Rule 12(b)(1), the court may dismiss a claim for failure to establish subject-matter jurisdiction. "Subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived." *United States v. Cotton*, 535 U.S. 625, 630 (2002). A plaintiff must plausibly allege all jurisdictional elements. *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014). If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action. Civ. Rule 12(h)(3).

This court does not have subject matter jurisdiction over Plaintiff's claims because federal bankruptcy courts have no jurisdiction to invalidate the results of state criminal proceedings. *In re Gruntz*, 202 F.3d 1074, 1084 (9th Cir. 2000); *In re Bonilla*, No. 19-403, 2019 Bankr. LEXIS 2566 at **2-3 (N.D. Cal. Aug. 16, 2019).

"[W]hen a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). "Although the writ of habeas corpus has common law roots and is protected in the Constitution, the power to award the writ by any of the courts of the

United States must be given by written law – a statute.” *In re Lockett*, 612 B.R. 408, 411 (Bankr. D.N.M. 2020).

Plaintiff here seeks to challenge his physical imprisonment, so Plaintiff’s only remedy is through a writ of habeas corpus. The power to consider a writ of habeas corpus is provided in 28 U.S.C. § 2241(a) (or 28 U.S.C. § 2254 for state court judgments) to any justice of the Supreme Court, the district courts, and any circuit judge in their respective jurisdictions. Federal bankruptcy courts are not federal district courts; rather, they “constitute a unit of the district court.” 28 U.S.C. § 151. Therefore, the authority of bankruptcy judges is limited to the authority provided in Title 28, Chapter 6 of the U.S. Code. This court does not have the power to consider writs of habeas corpus and lacks jurisdiction over Plaintiff’s complaint seeking release from prison. Plaintiff’s remaining claims are derivative of his claim for release from confinement.

Additionally, Cal. Civ. Code § 1608 is inapplicable because neither Plaintiff’s criminal conviction nor his indictment are an “illegal contract.” Under California law, an indictment is not a contract; rather, it is an accusatory pleading in a criminal action. Cal. Pen. Code (“PC”) § 691(c). An indictment contains the allegations of a grand jury. *Guillory v. Superior Court*, 31 Cal. 4th 168, 173 (2003), citing *People v. Superior Court (Gevorgyan)*, 91 Cal. App. 4th 602, 611-12 (2001). After an indictment is presented to the superior court, it becomes the accusatory pleading of the prosecutor and initiates a criminal action, which is a proceeding by which a party charged with a public offense is accused and brought to trial and punishment. *Id.*; PC § 683. A conviction for a public offense arises upon a guilty verdict from a jury that is accepted and recorded by a court of competent jurisdiction, or by finding of the court if a jury has been waived, or by a plea of guilty. PC § 689.

To state a contract claim, a plaintiff must necessarily plead that a contract was formed, which requires details of the terms and its formation, including mutual assent consisting of an offer and acceptance. *Netbula LLC v. BindView Dev. Corp.*, 516 F. Supp. 2d 1137, 1155 (N.D. Cal. 2007) (mutual assent accomplished when a specific offer is communicated to an offeree and acceptance is communicated to the offeror). Here, the complaint fails to allege that the prosecutor in Plaintiff’s criminal case made an offer to issue an indictment to the Plaintiff, which the Plaintiff then accepted. Therefore, Plaintiff’s claim that the indictment was the basis of the formation of a contract fails to state a claim for relief under Civ. Rule 12(b)(6).

CONCLUSION

This matter will be called and proceed as scheduled. The court intends to GRANT the motion and DISMISS the adversary complaint for lack of subject matter jurisdiction. The dismissal is without prejudice but leave to amend will not be granted. Since this court has no subject

matter jurisdiction to adjudicate Plaintiff's confinement and the indictment by which Plaintiff is confined is not a contract, the court finds that any amendment to the complaint cannot cure the legal defects. *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016).

² See Official Certificate of Service Form Information for Bankr. E.D. Cal., <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited Mar. 6, 2023).

11:30 AM

1. [22-12050](#)-B-7 **IN RE: FRANCISCO GONZALEZ**

PRO SE REAFFIRMATION AGREEMENT WITH TD BANK, N.A.
1-20-2023 [[15](#)]

JOSEPH PEARL/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

A Reaffirmation Agreement between Francisco Robert Gonzalez ("Debtor") and TD Bank, N.A., successor to TD Auto Finance LLC, for a 2013 Mercedes-Benz C Class was filed on January 20, 2023. Doc. #15.

Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the Debtor's attorney attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by Debtor's counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable. Therefore, the reaffirmation agreement between Debtor and creditor TD Bank, N.A. will be DENIED.

Debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

2. [22-11985](#)-B-7 **IN RE: JESUS ZERMENO**

PRO SE REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL SERVICES, INC.
1-26-2023 [[21](#)]

NO RULING