

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: MONDAY
DATE: MARCH 15, 2021
CALENDAR: 1:30 P.M. CHAPTERS 9, 11 AND 12 CASES

RULINGS

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

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g. nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [20-22413](#)-A-11 **IN RE: PAUL PINGOL AND RUBY LOZADA**

APPROVAL OF DISCLOSURE STATEMENT
2-1-2021 [[78](#)]

ARASTO FARSAD/ATTY. FOR DBT.

No Ruling

2. [20-22413](#)-A-11 **IN RE: PAUL PINGOL AND RUBY LOZADA**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
5-7-2020 [[1](#)]

ARASTO FARSAD/ATTY. FOR DBT.

No Ruling

3. [19-22025](#)-A-12 **IN RE: JEFFREY DYER AND JAN WING-DYER**
[MHM-1](#)

MOTION TO DISMISS CASE
2-2-2021 [[206](#)]

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

No Ruling

4. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
7-30-2020 [[1](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.

No Ruling

5. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT
[BRL-2](#)**

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-13-2021 [[140](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.
BENJAMIN LEVINSON/ATTY. FOR MV.
LISA MOTES VS.

No Ruling

6. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT
[BRL-3](#)**

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
2-10-2021 [[159](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.
BENJAMIN LEVINSON/ATTY. FOR MV.
JEFFERY BLEECKER VS.

No Ruling

7. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT
[GEL-7](#)**

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH GREATER COOPER AME ZION CHURCH AND THE
AFRICAN METHODIST EPISCOPAL CHURCH
2-16-2021 [[167](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.

No Ruling

8. [20-24259](#)-A-11 **IN RE: NESTOR/MARIA QUILATES**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
9-4-2020 [[1](#)]

ARASTO FARSAD/ATTY. FOR DBT.

No Ruling

APPROVAL OF AMENDED DISCLOSURE STATEMENT
2-1-2021 [\[57\]](#)

ARASTO FARSAD/ATTY. FOR DBT.

Tentative Ruling

Motion: Approval of Disclosure Statement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Denied

Order: Civil minute order

Nestor Quilates and Ermelinda Quilates filed a Chapter 11 case and seek approval of the disclosure statement. Combined Plan of Reorganization and Disclosure Statement, February 1, 2021, ECF No. 57.

DISCUSSION

Disclosure Statement

A disclosure statement must contain adequate information. 11 U.S.C. 1125.

The court finds that the disclosure statement does not accurately the dividend that would be paid to unsecured creditors if the case converted to Chapter 7. 11 U.S.C. § 1129(a)(7)(B)(ii). The plan and disclosure statement indicate creditors would receive no monies in a Chapter 7 liquidation. Plan and Disclosure Statement, Exh. 2, pp. 12-13, ECF No. 57.

This court disagrees. Non-exempt equity at the time of filing was \$2,352 (rental deposit \$2,000 and \$352 Chase Checking account # 880). But the disclosure statement does not account for \$25,674 in cash accumulated from the debtors' wages during the case. Monthly Operating Report, Line 3e, Column 2, February 18, 2021, ECF No. 62. These are property of the estate and are not exempt. 11 U.S.C. §§ 348(f)(1)(A), 1115(a)(2). Pre-petition and post-petition wages aggregate \$28,026. Assuming Chapter 7 trustees fees of \$3,552.60, 11 U.S.C. § 326, and Chapter 11 administrative expenses of \$7,500 (\$20,00 due debtor's counsel less retainer \$12,500), the sum of \$16,973.40 remains for payment to unsecured creditors. Given unsecured claims of \$70,827.60 (assuming \$36,000 to Deutsche Bank National Trust, Order ¶ 4, December 8, 2020, ECF No. 38 and other unsecured claims of \$34,827.68, Plan Class 2(b), February 1, 2021, ECF No. 57), this appears to be a dividend of 24%.

Since the plan represents otherwise the disclosure statement does not provide adequate information within the meaning of § 1125.

Plan Confirmation

If an unsecured creditor objects to confirmation, the plan does not satisfy 11 U.S.C. § 1129(a)(15). That section provides:

In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan--

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the *projected disposable income of the debtor (as defined in section 1325(b)(2))* to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

11 U.S.C. § 1129(a)(15) (emphasis added).

Section 1325(b)(2) provides:

For purposes of this subsection, the term "*disposable income*" means *current monthly income received by the debtor* (other than payments made under Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19), child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) *less amounts reasonably necessary to be expended--*

(A)(i) *for the maintenance or support of the debtor or a dependent of the debtor*, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

(ii) for charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

11 U.S.C. § 1325(b)(2) (emphasis added).

Quilates current monthly income is \$12,083. Form 122B, September 4, 2020, ECF No. 1. Assuming without deciding that Amended Schedule J, February 18, 2021, ECF No. 60, are the amounts reasonably necessary for maintenance and support of the debtors and their dependents that amount is \$8,385.01, leaving \$3,697.99 for creditors. Over 5 years unsecured creditors would receive \$221,879.40. General unsecured creditors are \$34,827.68. Deutsche Bank National Trust is undersecured and whether they would receive any funds from the sale of 2681 Cinnebar Hills Court, Brentwood, California is unclear. If this creditor is wholly unsecured it would be owed as much as \$332,455. Schedule D § 2.2, September 4, 2020, ECF No. 1.

Obviously, whether a creditor would object to confirmation is unclear at this time. But should a creditor object, § 1129(a)(15) would block confirmation.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Nestor Quilates and Ermelinda Quilates's motion has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.

10. [21-20485](#)-A-12 **IN RE: PATRICK/PATRICIA MCCAULEY**

STATUS CONFERENCE RE: VOLUNTARY PETITION
2-10-2021 [\[1\]](#)

No Ruling

11. [20-25294](#)-A-11 **IN RE: HILLIARD CHAPEL AME ZION CHURCH**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
11-23-2020 [\[1\]](#)

DAVID JOHNSTON/ATTY. FOR DBT.

No Ruling

12. [20-25396](#)-A-11 **IN RE: RACEDAY CYCLE, INC.**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
12-1-2020 [[1](#)]

STEPHEN REYNOLDS/ATTY. FOR DBT.

No Ruling