

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, March 18, 2021
Place: Department A - Courtroom #11
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

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

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

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

1. [20-11700](#)-A-13 **IN RE: PATSY CALDWELL**
[ASW-1](#)

MOTION TO MODIFY PLAN
2-5-2021 [\[21\]](#)

PATSY CALDWELL/MV
ALLAN 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 is DENIED WITHOUT PREJUDICE for improper notice. Local Rule of Practice ("LBR") 3015-1(d)(2) requires notice of a motion to confirm a modified chapter 13 plan proposed after confirmation to comply with Federal Rule of Bankruptcy Procedure 3015(h) and LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires opposition to the motion to be filed and served at least 14 days prior to the hearing. The Notice of Hearing filed in connection with this motion was set under LBR 9014-1(f)(2), which does not require written opposition to be filed and served at least filed 14 days prior to the hearing. Therefore, the notice of the motion does not comply with LBR 3015-(d)(2). The court urges counsel to review the local rules in order to be compliant in future matters. The rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

2. [21-10125](#)-A-13 **IN RE: JOEL/ARACELI ALVARADO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-24-2021 [\[18\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.
\$79.00 INSTALLMENT PAYMENT 3/3/21

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

OBJECTION TO CONFIRMATION OF PLAN BY UNITED STATES INTERNAL
REVENUE SERVICE
2-26-2021 [\[19\]](#)

UNITED STATES INTERNAL REVENUE SERVICE/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
JEFFREY LODGE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

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

The debtors filed their Chapter 13 plan ("Plan") on January 20, 2021. Doc. #4. The Internal Revenue Service ("IRS") objects to confirmation of the Plan on the grounds that: (1) the Plan does provide for interest on the IRS's secured claim; and (2) the Plan does not list or provide for full payment of the IRS's secured claim as required by 11 U.S.C. § 1325(a)(5). Doc. #19. The IRS asserts a claim of \$79,680.00, of which \$75,347.98 is secured, \$3,931.45 is unsecured entitled to priority, and \$400.57 is an unsecured general claim. Claim 5-1; Mot., Doc. #19. The IRS's claim does not assert any amount in default as of the petition date. Claim 5-1. The debtors' Schedule A/B values all property at \$113,669.31. Schedule A/B, Doc. #1. The debtors claim \$73,605.31 in exemptions. Schedule C, Doc. #1.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. The IRS filed its proof of claim on February 9, 2021. Claim 5-1. No party in interest has objected to the IRS's claim. The Plan does not identify any secured claims held by the IRS. Plan, Doc. #4. The Plan calls for 100% dividend payments to nonpriority unsecured claims and will pay priority unsecured claims in full. Plan ¶¶ 3.12, 3.13, Doc. #4.

The IRS argues that the Plan fails to list and provide for full payment of the IRS's secured claim and fails to pay interest on the secured claim. Doc. #19. Bankruptcy Code § 1325(a)(5) permits confirmation of a chapter 13 plan so long as provisions are made "with respect to each allowed secured claim provided for by the plan." 11 U.S.C. § 1325(a)(5). However, a chapter 13 plan need not "provide for" a secured claim. See Shook v. CBIC (In re Shook), 278 B.R. 815, 826-27 (B.A.P. 9th Cir. 2002). The failure to "provide for" an IRS lien in a confirmed chapter 13 plan does not affect the lien's validity. Bisch v. United States (In re Bisch), 159 B.R. 546, 549 (B.A.P. 9th Cir. 1993); see also Nomellini v. IRS (In re Nomellini), 577 B.R. 851, 856-57 (N.D. Cal. 2017).

Moreover, while the IRS may be entitled to post-petition interest to the extent provided under 11 U.S.C. § 506(b), the court need not make that determination because the debtors' Plan does not "provide for" the IRS's secured claim. See United States v. Ron Pair Enter., 489 U.S. 235 (1989).

Accordingly, the objection will be OVERRULED.

4. [18-15035](#)-A-13 **IN RE: HENRY LOYA HERNANDEZ AND ALICE HERNANDEZ**
[RPZ-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-28-2020 [[74](#)]

WELLS FARGO BANK, N.A./MV
SCOTT LYONS/ATTY. FOR DBT.
ROBERT ZAHRADKA/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 29, 2021, at 9:30 a.m.

ORDER: The court will issue an order.

Pursuant to the Status Report filed by Wells Fargo Bank, N.A. as Trustee for the Carrington Mortgage Loan Trust, Series 2007-FRE1, Asset-Backed Pass-Through Certificates (Doc. #115) ("Status Report"), the hearing on this motion will be continued to April 29, 2021, at 9:30 a.m., to track with the debtors' motion to confirm the fourth modified plan. The court deems the request of the parties as set forth in paragraphs 10 and 11 of the Status Report to be the consent required by 11 U.S.C. § 362(e)(2)(B)(i) to the extension of the 60-day period for resolution of this motion as provided in 11 U.S.C. § 362(e)(2).

5. [18-15035](#)-A-13 **IN RE: HENRY LOYA HERNANDEZ AND ALICE HERNANDEZ**
[SL-3](#)

MOTION TO MODIFY PLAN
2-8-2021 [[92](#)]

ALICE HERNANDEZ/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The debtor has filed and set for hearing on April 29, 2021 at 9:30 a.m. a motion for confirmation of a fourth modified plan (SL-4). Doc. #108. Therefore, this motion will be DENIED AS MOOT.

MOTION TO INCUR DEBT
3-1-2021 [\[92\]](#)

LEONARDO GONZALEZ/MV
SCOTT LYONS/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 the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date 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.

Leonardo Gonzalez ("Debtor"), the chapter 13 debtor in this case, moves the court for an order authorizing Debtor to incur new debt. Doc. #92. In May 2017, Debtor incurred a loan from the United States Department of Agriculture for \$157,900.00 (the "USDA Loan"). Decl. of Leonardo Gonzalez, Doc. #94. Debtor requests the bankruptcy court approve the final disbursement from the USDA Loan be released to Debtor in the amount of \$13,700.50. Doc. #92.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

The court is inclined to GRANT this motion. This motion was properly served and noticed, and opposition may be presented at the hearing. The USDA Loan is identified in Class 4 of Debtor's confirmed chapter 13 plan and is to be paid by Debtor outside the chapter 13 plan. Plan, Doc. #55; Order Confirming Plan, Doc. #89. The funds to be received by Debtor are part of the total sum of the USDA Loan already executed. Decl., Doc. #94. Debtor requests the funds be released so Debtor may install wind turbines to protect Debtor's citrus crop. Decl., Doc. #94.

Accordingly, this motion is GRANTED. Debtor is authorized, but not required, to receive the final disbursement under the USDA Loan of up to \$13,700.50.

7. [20-13164](#)-A-13 **IN RE: BETSSY MANDUJANO**
[HDN-3](#)

CONTINUED MOTION TO CONFIRM PLAN
12-31-2020 [\[58\]](#)

BETSSY MANDUJANO/MV
HENRY NUNEZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor Betssy Mandujano ("Debtor") filed and served this motion to confirm the second amended chapter 13 plan pursuant to Local Rule of Practice ("LBR") 3015-1(d)(1) and set the hearing on February 11, 2021. Doc. ##48, 58-63. The chapter 13 trustee ("Trustee") filed an opposition to Debtor's motion. Doc. #67. The court continued this matter to March 18, 2021 at 9:30 a.m. and ordered Debtor to file and serve a written response to Trustee's objection by February 25, 2021; or if Debtor elected to withdraw this plan, then Debtor had to file, serve, and set for hearing a confirmable modified plan by March 4, 2021. Civil Minutes, Doc. #75.

Having reviewed the docket in this case, the court finds Debtor has not voluntarily converted this case to Chapter 7 or dismissed this case, and Trustee's objection has not been withdrawn. Further, Debtor has not filed and served any written response to Trustee's objection. Debtor has not filed, served, and set for hearing a confirmable modified plan by the time set by the court.

Accordingly, Debtor's motion to confirm the second amended chapter 13 plan is DENIED on the grounds set forth in Trustee's opposition.

8. [20-13164](#)-A-13 **IN RE: BETSSY MANDUJANO**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
12-11-2020 [\[43\]](#)

MICHAEL MEYER/MV
HENRY NUNEZ/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor filed a non-opposition to the motion to dismiss on March 15, 2021. Doc. #81. The failure of creditors, 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). On March 15, 2021, the debtor filed a written statement of non-opposition to trustee's motion to dismiss. Doc. #81. 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Michael H. Meyer ("Trustee"), the chapter 13 trustee, moved to dismiss the chapter 13 bankruptcy case of Betssy Mandujano ("Debtor") for unreasonable delay that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and for failure of the Debtor to make all plan payments due under the plan (11 U.S.C. § 1307(c)(4)). Doc. #43. At the hearing on this motion held on February 11, 2021, the Trustee's motion was continued to be heard in conjunction with the motion to confirm Debtor's second amended plan set for March 18, 2021, even though Debtor never responded to Trustee's motion. Doc. #76. Debtor's motion to confirm the second amended plan (no. 7, above) will be denied, and Debtor does not oppose dismissal. Doc. #81.

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 by debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to timely make payments due under the plan.

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

1. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[20-1041](#) [WLG-1](#)

MOTION TO CONTINUE DISCOVERY DEADLINES
2-18-2021 [\[27\]](#)

SIHOTA ET AL V. SINGH ET AL
PETER SAUER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The defendants timely filed written opposition on March 4, 2021. Doc. #43. The moving parties timely replied to the opposition on March 11, 2021 ("Reply"). Doc. #68.

Kewal Singh, Jaskaran Sihota, and Jaswinder Kaur (together, "Plaintiffs") move the court to continue the discovery deadlines in this adversary proceeding by ninety (90) days pursuant to Federal Rule of Civil Procedure ("Rule") 16(b), made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7016. Mot., Doc. #27. Ajitpal Singh and Jatinderjeet Kaur Sihota (together, "Defendants") oppose the motion and contend that Plaintiffs have not shown good cause for such an extension as required by Rule 16(b)(4). Doc. #43.

On August 26, 2020, Plaintiffs and Defendants filed a Joint Report of Parties' Discovery Conference in which the parties requested, among other things, March 19, 2021, as the close of fact and expert discovery, including rebuttal experts (the "Discovery Deadline"). Doc. #11. The scheduling order in this adversary proceeding was entered on August 26, 2020 and established the Discovery Deadline as the date for the close of discovery in this adversary proceeding. Scheduling Order p. 2, Doc. #15. The scheduling order further stated that all motions seeking to modify the scheduling order "will be considered upon a showing of good cause and, if the request for modification is occasioned by the need for additional time to complete discovery, due diligence." Scheduling Order p. 7, Doc. #15. Plaintiffs filed this motion on February 18, 2021. Doc. #27.

Rule 16(b) requires the judge to issue a scheduling order that, once issued, "may be modified only for good cause and with the judge's consent." Rule 16(b)(4). "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the amendment. The [bankruptcy] court may modify the pretrial schedule 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'" Johnson v. Mammoth Recreations, 975 F.2d 604, 609 (9th Cir. 1992) (citations omitted). The substitution of new counsel is generally insufficient to demonstrate good cause. Porter v. Cal. Dep't of Corr., No. CIV S-00-978, 2006 U.S. Dist. LEXIS 368, at *3-5 (E.D. Cal. Jan. 6, 2006); Classical Silk, Inc. v. Dolan Grp., Inc., No. CV 14-09224-AB, 2016 U.S. Dist. LEXIS 190580, at *9-11 (C.D. Cal. Mar. 1, 2016). When the failure to take

discovery was based on a choice, a mere change in tactic does not constitute good cause. See Classical Silk, 2016 U.S. 190580 at *9-10.

Here, Plaintiffs seek a ninety-day extension of the Discovery Deadline. Doc. #27. Although the Discovery Deadline has not yet passed, Plaintiffs state that there remains inadequate time for Plaintiffs to propound written discovery and pursue any necessary enforcement motions prior to the Discovery Deadline. Decl. of Lenden Webb ¶ 5, Doc. #29. Plaintiffs argue that good cause exists to extend the Discovery Deadline because Plaintiffs recently substituted counsel and because Plaintiffs may be required to amend their pleadings. Doc. #27. However, Plaintiffs' concern that an amended complaint may need to be filed is now moot because Defendants' motion for judgment on the pleadings was denied by this court at the hearing on the motion on March 11, 2021. See Order, Doc. #66.

The only other basis for good cause asserted by Plaintiffs is that Plaintiffs recently substituted new counsel. Decl. ¶ 6, Doc. #29. However, Plaintiffs' Reply states that "neither current nor prior counsel for the Plaintiffs have sought to waste resources of the Court or parties by engaging in excessive or duplicative discovery requests, demands, or disputes. Restraint from wasteful and duplicative proceedings should not be conflated with dilatory pursuit of discovery." Pls.' Reply ¶ 5, Doc. #68. Plaintiffs further argue that "Plaintiffs' forbearance from engaging in lengthy or costly discovery processes that may ultimately be untimely" should not be construed "as a waiver of discovery rights." Pls.' Reply ¶ 7, Doc. #68.

Rule 16(b) and this court's scheduling order require Plaintiffs to show their diligence with respect to discovery before this court will extend the ordered discovery deadlines. The court finds that Plaintiffs' prior choice not to conduct discovery before the Discovery Deadline does not support a finding that Plaintiffs have been diligent in conducting discovery in this adversary proceeding. The court finds Plaintiffs have failed to show good cause for extending the Discovery Deadline under Rule 16(b) and the legal authority interpreting that rule.

Accordingly, this motion is DENIED.

2. [18-14546-A-7](#) **IN RE: LANE ANDERSON**
[19-1024](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-15-2019 [[1](#)]

MURILLO V. ANDERSON ET AL
RICK MORIN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 17, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the status report (Doc. #73), the status conference will be continued to June 17, 2021, at 11:00 a.m.

The parties shall file a joint or unilateral status conference statement(s) not later than June 10, 2021.

3. [19-10952](#)-A-7 **IN RE: DAVID MUSE**
[19-1050](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-21-2019 [\[1\]](#)

MURILLO V. MUSE
RICK MORIN/ATTY. FOR PL.

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

DISPOSITION: Continued to June 17, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the status report filed in consolidated adversary proceeding no. 19-1024 (Doc. #73), the status conference will be continued to June 17, 2021, at 11:00 a.m.

The parties shall file a joint or unilateral status conference statement(s) not later than June 10, 2021.

4. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[20-1042](#)

MOTION TO CONTINUE DISCOVERY DEADLINE
2-18-2021 [\[27\]](#)

SIHOTA ET AL V. SINGH ET AL
LENDEN WEBB/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The defendants timely filed written opposition on March 4, 2021. Doc. #46. The moving parties timely replied to the opposition on March 11, 2021 ("Reply"). Doc. #70.

Kewal Singh, Jaskaran Sihota, and Jaswinder Kaur (together, "Plaintiffs") move the court to continue the discovery deadlines in this adversary proceeding by ninety (90) days pursuant to Federal Rule of Civil Procedure ("Rule") 16(b), made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7016. Mot., Doc. #27. Bhajan Singh and Balvinder Kaur (together, "Defendants") oppose the motion and contend that Plaintiffs have not shown good cause for such an extension as required by Rule 16(b)(4). Doc. #46.

On August 26, 2020, Plaintiffs and Defendants filed a Joint Report of Parties' Discovery Conference in which the parties requested, among other things, March 19, 2021, as the close of fact and expert discovery, including rebuttal

experts (the "Discovery Deadline"). Doc. #11. The scheduling order in this adversary proceeding was entered on August 27, 2020 and established the Discovery Deadline as the date for the close of discovery in this adversary proceeding. Scheduling Order p. 2, Doc. #15. The scheduling order further stated that all motions seeking to modify the scheduling order "will be considered upon a showing of good cause and, if the request for modification is occasioned by the need for additional time to complete discovery, due diligence." Scheduling Order p. 7, Doc. #15. Plaintiffs filed this motion on February 18, 2021. Doc. #27.

Rule 16(b) requires the judge to issue a scheduling order that, once issued, "may be modified only for good cause and with the judge's consent." Rule 16(b)(4). "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the amendment. The [bankruptcy] court may modify the pretrial schedule 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'" Johnson v. Mammoth Recreations, 975 F.2d 604, 609 (9th Cir. 1992) (citations omitted). The substitution of new counsel is generally insufficient to demonstrate good cause. Porter v. Cal. Dep't of Corr., No. CIV S-00-978, 2006 U.S. Dist. LEXIS 368, at *3-5 (E.D. Cal. Jan. 6, 2006); Classical Silk, Inc. v. Dolan Grp., Inc., No. CV 14-09224-AB, 2016 U.S. Dist. LEXIS 190580, at *9-11 (C.D. Cal. Mar. 1, 2016). When the failure to take discovery was based on a choice, a mere change in tactic does not constitute good cause. See Classical Silk, 2016 U.S. 190580 at *9-10.

Here, Plaintiffs seek a ninety-day extension of the Discovery Deadline. Doc. #27. Although the Discovery Deadline has not yet passed, Plaintiffs state that there remains inadequate time for Plaintiffs to propound written discovery and pursue any necessary enforcement motions prior to the Discovery Deadline. Decl. of Lenden Webb ¶ 5, Doc. #29. Plaintiffs argue that good cause exists to extend the Discovery Deadline because Plaintiffs recently substituted counsel and because Plaintiffs may be required to amend their pleadings. Doc. #27. However, Plaintiffs' concern that an amended complaint may need to be filed is now moot because Defendants' motion for judgment on the pleadings was denied by this court at the hearing on the motion on March 11, 2021. See Order, Doc. #68.

The only other basis for good cause asserted by Plaintiffs is that Plaintiffs recently substituted new counsel. Decl. ¶ 6, Doc. #29. However, Plaintiffs' Reply states that "neither current nor prior counsel for the Plaintiffs have sought to waste resources of the Court or parties by engaging in excessive or duplicative discovery requests, demands, or disputes. Restraint from wasteful and duplicative proceedings should not be conflated with dilatory pursuit of discovery." Pls.' Reply ¶ 5, Doc. #70. Plaintiffs further argue that "Plaintiffs' forbearance from engaging in lengthy or costly discovery processes that may ultimately be untimely" should not be construed "as a waiver of discovery rights." Pls.' Reply ¶ 7, Doc. #70.

Rule 16(b) and this court's scheduling order require Plaintiffs to show their diligence with respect to discovery before this court will extend the ordered discovery deadlines. The court finds that Plaintiffs' prior choice not to conduct discovery before the Discovery Deadline does not support a finding that Plaintiffs have been diligent in conducting discovery in this adversary proceeding. The court finds Plaintiffs have failed to show good cause for extending the Discovery Deadline under Rule 16(b) and the legal authority interpreting that rule.

Accordingly, this motion is DENIED.

5. [19-14729](#)-A-13 **IN RE: JASON/JODI ANDERSON**
[19-1131](#)

CONTINUED MOTION IN LIMINE NO. THREE TO EXCLUDE TESTIMONY OF
PLAINTIFFS RETAINED EXPERT WITNESS JAMES E. SALVEN, C.P.A
12-21-2020 [[74](#)]

ANDERSON ET AL V. NATIONAL ENTERPRISE SYSTEMS, INC.
ANTHONY VALENTI/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.