

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, March 30, 2022
Place: Department B – Courtroom #13
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [21-12008](#)-B-13 **IN RE: CELESTE MURILLO**
[JNV-3](#)

MOTION TO CONFIRM PLAN
1-28-2022 [[37](#)]

CELESTE MURILLO/MV
JASON VOGELPOHL/ATTY. FOR DBT.

NO RULING.

Celeste Lucia Murillo ("Debtor") seeks confirmation of the Second Amended Chapter 13 Plan filed October 26, 2021 ("Second Plan"). Doc. #37. The Second Plan was served on all parties in interest on October 26, 2021. The *Motion to Confirm Second Amended Chapter 13 Plan*, notice, and supporting documents were served on all parties on January 31, 2022. Doc. #41. An amended notice correcting the hearing date was served on February 9, 2022. Doc. #46.

However, on December 20, 2021, Debtor previously filed and served the Third Amended Chapter 13 Plan ("Third Plan"). Doc. #35. The only difference between the two plans is Section 3.08(d). The Second Plan says that Class 2(A) creditors Bay Federal Credit Union and Coast Hills Credit Union do not have purchase money security interests in personal property. Doc. #23.

The Third Plan says that these creditors do in fact have purchase money security interests in personal property. Doc. #35. The Third Plan has neither been withdrawn nor set for hearing.

This matter will be called as scheduled to inquire whether the Class 2(A) secured creditors have purchase money security interests. If so, this motion may be DENIED AS MOOT since the Third Plan has been filed and needs to be set for confirmation hearing with a noticed motion to modify plan. If not, the court will inquire at the hearing whether Debtor withdraws the Third Plan.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1) and will proceed as scheduled. Doc. #45. The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

If this motion is granted, any confirmation order shall include the docket control number of the motion and shall reference the plan by the date it was filed.

2. [17-10318](#)-B-13 **IN RE: ALBERT/DEE ANNA KNAUER**
[MHM-2](#)

MOTION TO DISMISS CASE
2-22-2022 [[69](#)]

MICHAEL MEYER/MV
NANCY KLEPAC/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was already entered on March 1, 2022. Doc. #74. Therefore, this motion will be DENIED AS MOOT.

3. [16-14058](#)-B-13 **IN RE: SHANNON CASTONGUAY**
[MHM-2](#)

MOTION TO DISMISS CASE
2-18-2022 [[72](#)]

MICHAEL MEYER/MV
NANCY KLEPAC/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 7, 2022 at 9:30 a.m.

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 by the debtor with respect to a term of a confirmed plan. Doc. #72. Trustee declares that payments are delinquent in the amount of \$1,058.66 as of February 18, 2022, and two additional payments of \$1,155.33 will become due before the hearing, for a total of \$3,369.32 due before the hearing date. Doc. #74.

Shannon Marie Castonguay ("Debtor") timely responded. Doc. #84. Debtor acknowledges the delinquency, but states that a modified plan has been

filed, served, and set to be heard on April 7, 2022. Accordingly, this motion to dismiss will be CONTINUED to April 7, 2022 to be heard in connection with Debtor's motion to modify plan.

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 U.S. Trustee, or any other party in interest except Debtor 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 motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtor 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).

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)(6) for being delinquent in making plan payments.

In addition to the delinquency described above, Trustee has reviewed the schedules and determined that there are non-exempt assets that could be liquidated for the benefit of the estate. Doc. #74. Debtor has opted to use the exemption scheme outlined in Cal. Code Civ. Proc. §§ 704.010-704.995. As of the previous plan's confirmation date, there is a liquidation value of \$3,134.06, after trustee compensation. *Id.* This is comprised of the non-exempt equity in Debtor's 2016 tax refund. If Debtor amends the exemptions, there would still be non-exempt equity that could be liquidated for the benefit of unsecured creditors if the case were converted to chapter 7. *Id.* However, as of February 18, 2022, unsecured creditors have been paid approximately \$2,394.13 with a remaining balance of \$739.39 to be paid pursuant to the Second Modified Plan (Doc. #62). *Id.*

As noted above, Debtor filed a Third Modified Chapter 13 Plan, which is set for hearing on April 7, 2022. Doc. #84; *cf.* TCS-3. Accordingly, this motion will be CONTINUED to April 7, 2022 at 9:30 a.m. to be heard in connection with the motion to modify plan.

4. [22-10070](#)-B-13 **IN RE: KARA RENFROE**
[MHM-1](#)

MOTION TO DISMISS CASE
2-25-2022 [[15](#)]

MICHAEL MEYER/MV
JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors. Doc #15. 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.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor failed to provide required documentation to the trustee and failed to provide proof of income for the last 6 months as required by 11 U.S.C. § 521(a)(3) and (4)).

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.

In addition, the trustee has reviewed the schedules and determined that the debtor's assets are over encumbered and are of no benefit to the estate. Doc. #15.

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

5. [18-11872](#)-B-13 **IN RE: LAURIE BUDRE**
[MHM-4](#)

MOTION TO DISMISS CASE
2-18-2022 [[162](#)]

MICHAEL MEYER/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

Since posting the original pre-hearing dispositions, the court has changed its intended ruling on this matter.

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

DISPOSITION: Denied as moot.

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)(4) for unreasonable delay by the debtor that is prejudicial to creditors and failure to commence making timely payments due under the plan. Doc. #162. Trustee declares that Debtor has failed to make all required payments. Payments are delinquent in the amount of \$5,180.00 as of February 18, 2022, and two additional payments of \$2,660.00 will become due before the hearing, for a total of \$10,500.00.

Laurie Michelle Budre ("Debtor") timely responded. Doc. #166. Debtor declares that she is obtaining funds from family in an amount necessary to catch up on payments through March 2022 and become current on plan payments. Doc. #167. However, on March 29, 2022, Debtor filed an *ex parte* motion to voluntarily dismiss the case pursuant to 11 U.S.C. § 1307(b). Doc. #169. That same date, the court dismissed the case. Doc. #171.

Accordingly, Trustee's motion to dismiss will be DENIED AS MOOT because the case has already been dismissed.

TRUSTEE'S FINAL REPORT AND ACCOUNT
1-4-2022 [\[453\]](#)

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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.

International Fidelity Insurance Company ("IFIC") objects to the *Chapter 13 Standing Trustee's Final Report and Account* ("Final Report") filed by chapter 13 trustee Michael H. Meyer ("Trustee") on January 4, 2022 (Doc. #453).¹ Doc. #458.

Trustee responded. Doc. #466.

IFIC replied. Doc. #469.

Thereafter, Shelby Dane King and Carol Dean King ("Debtors") responded. Doc. #470.

This matter will be called as scheduled. The court is inclined to **OVERRULE** the objection for failure to comply with the Local Rules of Practice and failure to make a *prima facie* showing of entitlement to the relief sought.²

The objection suffers from several procedural infirmities.

No Docket Control Number

First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court. Each new matter requires a new DCN, including objections. The DCN shall consist of not more than three letters, which may be the initials of the attorney or the law firm, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that case. LBR 9014-1(c)(3).

Here, IFIC's objection and supporting documents did not contain a DCN. No DCN was required for Trustee's Final Report because it is an administrative form pleading provided by the U.S. Trustee, which is filed in every bankruptcy. However, IFIC's objection initiated a new

contested matter, so a DCN was required in the captions of the objection and all supporting pleadings.

Missing opposition deadline language

Second, LBR 9014-1 applies to all contested matters, including objections, and other matters for which a hearing is necessary. LBR 9014-1(d)(3)(B)(i) specifies that the notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition. If written opposition is required, the notice shall advise respondents that failure to timely file written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition. LBR 9014-1(d)(3)(B)(ii).

The objection here was initially filed on February 1, 2022 and set for March 31, 2022. Doc. #459. IFIC filed an amended notice on February 3, 2022, which corrected the hearing date to March 30, 2022. Doc. #463. The objection was therefore filed on more than 28 days of notice under LBR 9014-1(f)(1). As result, IFIC was required to provide the opposition procedure disclosures specified under LBR 9014-1(d)(3)(B)(i)-(ii) and (f)(1)(B), which it did not do.

Attached proof of service

Third, IFIC attached certificates of service to its *Amended Notice of Hearing* (Doc. #463) and *IFIC's Reply in Support of Objection* (Doc. #469). The certificates should not have been attached to the pleadings and should have been filed separately. LBR 9004-2(e)(1), (e)(2), and LBR 9014-1(e)(3) require proofs of service to be filed as separate documents rather than being attached to copies of the pleadings and documents served. Counsel is advised to review the local rules on the court's website and ensure procedural compliance in all future matters.³

Other issues

The above grounds are enough to overrule this objection. When a bankruptcy court operates within its local rules, there is no abuse of discretion in application of those local rules. *In re Thao Tran Nguyen*, 447 B.R. 268, 281 (B.A.P. 9th Cir. 2011) (*en banc*).

Even if all procedural errors were addressed, the moving papers still do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Judicial Notice

The court takes judicial notice of all pleadings docketed in this bankruptcy case filed April 26, 2016 (Case No. 16-11473) and IFIC's adversary proceeding filed against Debtors on March 8, 2017, entitled *International Fidelity Insurance Company, a New Jersey Corporation v.*

Shelby Dane King and Carol Dean King (Adv. Proc. No. 17-01023). The court may take judicial notice of all documents and other pleadings filed in this bankruptcy case, the related adversary proceeding, filings in other court proceedings, and public records, but not the truth or falsity of such documents as related to findings of fact. Fed. R. Evid. 201; *Bank of Am., N.A. v. CD-04, Inc. (In re Owner Gmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015); *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

BACKGROUND

Debtors filed a chapter 13 voluntary petition on April 26, 2016. Doc. #1. The following day, Trustee was designated as standing trustee under § 1302. Doc. #2.

IFIC was neither listed in the original schedules (Doc. #1), nor included in the original *Verification of Master Address List* (Doc. #4). As result, IFIC did not receive the *Notice of Chapter 13 Bankruptcy* (Doc. #14) filed May 13, 2016, which set the September 7, 2016 as the bar date for filing non-governmental proofs of claim. Doc. #15.

Debtors filed *Amended Schedules D and E/F* on June 16, 2016. Doc. #20. This amendment did not include IFIC.

Claim 26-1

On October 7, 2016, after the bar date had passed, IFIC filed Proof of Claim No. 26 in the amount of \$275,682.27. See Claim 26-1. The basis for the claim was an *Agreement of Indemnity* executed on or about January 27, 2014 by Our Valley Fence, Inc. ("OVF"), a California Corporation, Debtors, and two other third-parties indemnifying IFIC for losses on account of certain bonds issued to OVF. *Attach. 1* to Claim 26-1. Debtors own an 86% interest in OVF, and joint debtor Carol King is the CEO of OVF.⁴ Doc. #1, *Sched. A/B*, ¶ 19.

The day Claim 26 was filed, IFIC also filed a nearly identical Proof of Claim No. 14-1 in OVF's chapter 7 bankruptcy, Case No. 16-11469, citing the same indemnity agreement dated January 27, 2014.⁵ It is unclear when and how IFIC received notice of the bankruptcy.

On January 1, 2017, Debtors objected to the allowance of Claim 26 on grounds that it failed to (a) identify the contracts entered into by OVF from which the claim arises; (b) show the calculation used in determining the amount of IFIC's claim, or (c) provide any other documentation or information that establishes IFIC's right to be paid \$275,682.27. Doc. #138; LKW-9. The objection was filed on 44 days' notice pursuant to LBR 3007-1(b)(1) and set for March 9, 2017. Doc. #139.

Debtors served the objection, notice, and supporting documents on IFIC on January 12, 2017 by U.S. mail to (i) the name and address listed in Claim 26-1 where notices should be sent, and to (ii) Louis White,

IFIC's Claims Counsel who executed the claim. Docs. ##142-43. Under LBR 9014-1(f)(1)(B), the deadline for IFIC to file written opposition was February 23, 2017.

IFIC missed the opposition deadline. On March 3, 2017, it filed a *Motion for Order Shortening Time and Emergency Motion to Continue Hearings on Objection to IFIC's Claim No. 26* set for April 6, 2017. Docs. ##182-83. The motions included an unexecuted stipulation to extend the claims bar date for IFIC based on Debtors' failure to notify IFIC of the bankruptcy. Doc. #191, *Ex. A*.

These motions were scheduled for 10:00 a.m., but the chapter 13 calendar on that date began at 9:00 a.m. So, the motions were not heard.⁶ Additionally, there is a docket entry indicating that IFIC never submitted a proposed order shortening time or notice of hearing:

 Contacted Sonya from the Law Office of Robert J. Berens on 3/6/17 regarding Failure to Submit a Proposed Order or Notice of Hearing Re: [182] Motion/Application to Shorten Time [LKW-9] (rlos)

See docket entry dated March 6, 2017.

On March 10, 2017, the court entered IFIC's default and sustained the objection without oral argument. Doc. #200. The order was sustained without prejudice to IFIC to file an amended proof of claim not later than 30 days from service of the order, with Debtors to serve the order on IFIC within 14 days. Doc. #209. The only ground for sustaining the objection was the untimely filing of Claim 26. *Id.* Debtors served a *Notice of Entry of Order* on IFIC on March 24, 2017. Docs. ##217-18.

The court's *Pre-Hearing Dispositions* acknowledge IFIC's late response with more detail:

 The court notes that the objection does not rest on the tardiness of the proof of claim; the proof of claim, however, was filed after the bar date.

 The court has reviewed the late response to this objection to proof of claim and the terms of the unexecuted stipulation drafted by the objecting party. The response appears to be related to the contention of the objecting party that it did not have notice of the debtors' bankruptcy filing in time to file a timely claim.

 The court lacks equitable discretion to enlarge the time to file proofs of claim. It may enlarge the filing time only according to exceptions in the Bankruptcy Code and Rules. *In re Gardenhire*, 209 F.3d 1145, 1147-48 (9th Cir. 2000).

An omitted creditor who did not receive notice or have actual knowledge of the filing in time to file a timely proof of claim has a remedy under § 523(a)(3)(A), specifically incorporated in § 1328(a)(2), excepting its claim from discharge. The provisions of § 523(a)(3) are self-effectuating, *In re Petty*, 491 B.R. 554, 559 (8th BAP, 2013), and, in the absence of an adversary proceeding brought by the debtor that results in a determination to the contrary, these claims are excepted from the chapter 13 discharge.

Pre-Hearing Dispositions dated March 9, 2017 (emphasis in original).⁷

Adversary Proceeding, Claim 26-2, and Settlement

In accord with that ruling, IFIC filed Adv. Proc. No. 17-01023 against Debtors on March 8, 2017, seeking to have its claim excepted from discharge under § 523(a)(3)(A). AP Doc. #1. Only Debtors and Debtors' counsel were served the summons and complaint; Trustee was not a party to this lawsuit. AP Doc. #7.

The following month, April 6, 2017, IFIC filed an amended proof of claim within the 30-day deadline established by the order disallowing Claim 26. Am. Claim 26-2. Though the amendment included additional substantiating documentation, it failed to ever address the timeliness defect for which Claim 26-1 was disallowed. Thus, it is still disallowed under the doctrine of *res judicata*. See *Mpoyo v. Litton Electro-Optical Sys.*, 430 B.3d 985, 987 (9th Cir. 2005) ("Res judicata applies when 'the earlier suit . . . (1) involved the same 'claim' or cause of action as the later suit, (2) reached a final judgment on the merits, and (3) involved identical parties or privies.'"), quoting *Sidhu v. Flecto Co.*, 279 F.3d 896, 900 (9th Cir. 2002).

Further, post hoc allowance of the claim may constitute an abuse of discretion under the doctrine of "law of the case," in which a court is precluded from reconsidering an issue that has already been decided. *Rebel Oil Co. v. Atl. Richfield Co.*, 146 F.3d 1088, 1093 (9th Cir. 1998), *cert. den.*, 525 U.S. 1017 (1998). The doctrine is applicable when the issue in question has been "decided explicitly or by necessary implication in the previous disposition." *Id.*; see also, *Jeffries v. Wood*, 114 F.3d, 1484, 1488-89 (9th Cir. 1997), *cert. den.*, 522 U.S. 1008 (1997).

Nearly one year later, the parties settled the adversary proceeding. The *Settlement Agreement* recites Debtors' execution of the indemnity agreement and concedes to filing the bankruptcy petition without notifying IFIC nor listing it in the schedules. AP Doc. #44, Ex. A. Debtors acknowledge IFIC's lack of actual knowledge of the bankruptcy in time to timely file a proof of claim. The sustained objection, adversary proceeding, and amended proof of claim are referenced, and the parties state their desire to resolve the disputes with this agreement.

There are two settlement conditions on which the agreement is "expressly conditioned[.]" If the conditions are not satisfied, then the agreement "will be null and void and of no further legal effect." *Id.*, *Ex. A*, at 5, ¶¶ 2-3. Those conditions:

1. IFIC's claim will be an allowed Class 7 General Unsecured Claim;
2. IFIC will receive distributions under the Third Modified Plan with the same distribution on its claim as other allowed Class 7 General Unsecured Claims.

Id. Additionally, under the agreement, Debtors' counsel is to prepare the Rule 9019 motion to approve the settlement and "will diligently prosecute the approval of this Agreement by the Bankruptcy Court." *Id.*, ¶ 4. The agreement was executed by Debtors, by Kyle P. Murphy, a Vice President and Senior Claims Officer of IFIC, and by counsel for both.

Subsequently, Debtors' counsel noticed a *Motion for Authority to Settle Adversary Proceeding* ("9019 Motion") set for hearing on April 5, 2018. AP Doc. #28.

Trustee, the U.S. trustee, IFIC, and certain creditors requesting special notice in the bankruptcy were served with: (1) Debtors' 9019 Motion and related supporting papers on March 2, 2018 (AP Docs. #28-31); and (2) a proposed *Order Authorizing Debtors to Settle Adversary Proceeding* on April 6, 2018.⁸ Doc. #32; #41. The 9019 Motion was not served on all creditors in the bankruptcy as required by Rules 9019 and 2002.

The court approved the settlement agreement on April 9, 2018. Doc. #44. The order provided, "IFIC's claim for \$275,682.27 is allowed as a Class 7 General Unsecured claim in Defendants' Chapter 13 case." *Id.*, at 2, ¶ 3.

Debtors filed a *Notice of Entry of Order Authorizing Debtors to Settle Adversary Proceeding* (AP Doc. #45) on April 11, 2018. AP Docs. #32; #41. Thereafter, a *Notice of Intent to Dismiss an Adversary Proceeding* was circulated on May 9, 2018 and no responses were submitted, so the adversary proceeding was dismissed on June 1, 2018. AP Docs. #47; #49. It was subsequently closed on June 19, 2018.

Completion of Chapter 13 Plan

The settlement was never filed in the bankruptcy. IFIC did not engage in any further activity in the bankruptcy until filing this objection.

Debtors proceeded forward with their chapter 13 case. On September 13, 2021, Debtors confirmed their Fourth Modified Chapter 13 Plan. Doc. #434. The plan provided for a minimum dividend of 26% to be paid on account of Class 7 General Unsecured Claims. Doc. #426, ¶ 3.14. Thereafter, Debtors completed plan payments.

The *Notice to Debtor of Completed Plan Payments* was filed October 20, 2021. Doc. #450. Trustee then filed the Final Report. Doc. #453. But IFIC objected. Doc. #458.

DISCUSSION

11 U.S.C. § 704(a)(9), *incorporated by* § 1302(b)(1), requires the trustee to make a final report and file a final account of the administration of the estate.

After the trustee has filed a final report and final account and the case is fully administered, if within 30 days no objection has been filed by the United States trustee or a party in interest, Rule 5009(a) creates a presumption that the estate has been fully administered.

IFIC's Objection

IFIC's objection was timely filed within 30 days of the final report. Doc. #458. The core of IFIC's objection is:

1. IFIC's Claim 26-2 is \$275,682.27;
2. The settlement agreement treats IFIC's claim as a \$275,682.27 Class 7 General Unsecured Claim;
3. The Final Report provides that IFIC's allowed claim is \$0.00; and
4. No pro-rata distributions were made or will be made to IFIC.

Id. IFIC requests:

1. No approval of the Final Report;
2. No issuance of a final decree because Trustee's administrative matters are not complete; and
3. No discharge of Trustee from his duties and obligations.

Id.

Trustee's Response

In response, Trustee states that the 9019 Motion and its respective order filed in the adversary proceeding were not docketed in the bankruptcy or served on all creditors, nor were they reviewed or processed by Trustee's office. Doc. #466.

Trustee contends that the March 10, 2017 order disallowing Claim 26 (Doc. #209) is binding and non-appealable. No appeals under Rule 8002(a) or motions for reconsideration under Rule 3008 were filed. Nor were any motions filed for relief from judgment or order under Civ. Rule 60(b) or (c). Trustee relied on the order disallowing Claim 26 and its finality cannot be reversed. *Id.*

Trustee also notes that the 9019 Motion did not provide notice to all creditors as required by Rule 2002. Additionally, allowance of the claim would undermine the plan. If the claim were included, the dividend to unsecured creditors would drop from the required 26% to

14.61%. Allowance of Claim 26 results in Trustee being required to file a motion to dismiss. *Id.*

Lastly, if IFIC were to file a motion to allow Claim 26, Trustee would be required to bring an objection to the claim based on its untimeliness. *Id.*

IFIC's Reply

IFIC's reply argues that the court's order dated March 9, 2017 sustaining Debtors' objection to its claim (Doc. #209) permitted IFIC to amend its proof of claim within 30 days of service of the order. Doc. #469. Based on this order, IFIC filed Amended Claim 26-2 within 30 days. So, IFIC insists that it is not trying to overcome a final order disallowing its claim, and instead timely amended Claim 26 within the time permitted.

Furthermore, IFIC says that the 9019 Motion was timely noticed to Trustee even though it may not have been reviewed by Trustee's office. *Id.* On this basis, IFIC repeats its requested relief: no approval for the Final Report, no issuance of the Final Decree, and no discharge of Trustee's duties and obligations.

Debtors' Response

Debtors responded to IFIC's objection and Trustee's response to clarify certain facts about the case. Doc. #470. Namely, Debtors made payments totaling \$273,037.67 throughout this case. From this amount, Trustee paid:

- a. \$101,633.38 to secured creditors;
- b. \$1,575.56 to priority unsecured creditors;
- c. \$91,963.48 to general unsecured creditors; and
- d. \$59,233.98 in administrative claims.

Doc. #471. The \$91,963.48 to general unsecured creditors represents a 26% dividend to allowed general unsecured claims as required by the Fourth Modified Plan. Debtors were informed by Trustee's office that the Fourth Modified Plan would require a 26% dividend to satisfy the legal requirements concerning payment to general unsecured creditors. *Id.* Debtors did not question this percentage and acted in good faith on relying on the directions given to them by Trustee's office. Further, Debtors believe that Trustee acted in good faith in informing them that the plan would require a 26% dividend, which was based on the belief that allowed general unsecured claims totaled \$357,705.69 rather than the \$627,813.62 shown in the Fourth Modified Plan. Debtors have resolved all of their creditors' claims through the case except the claim asserted against them by IFIC. Debtors also sold 17 parcels of real property for \$142,000, which represented most of their non-exempt assets. The size and complexity of this case is evidenced by more than 469 docket entries leading up to this response.

Though this objection presents a difficult question concerning the administration of their case, Debtors do not believe that they should

be penalized for relying on the information given to them by Trustee's office concerning the percentage to be paid to unsecured creditors, especially given that there have been no allegations that Debtors did not act properly throughout the case.

Lastly, Debtors note that Shelby Dane King is 82 years old, and Carol Dean King is 79 years. Debtors will be harmed if their progress is reversed by denying discharge, dismissing the case, or forcing conversion to a chapter 7 case. Conversion would result in Debtors' remaining non-exempt assets, including real property on which they operate their business, being liquidated by a chapter 7 trustee, and lost. Meanwhile, dismissal without entry of discharge would permit their pre-petition creditors to begin or renew collection actions against Debtors. And entry of discharge without discharging IFIC's claims would permit IFIC to seek collection of \$275,682.27 or more. Given Debtors' ages, subjecting them to any of the alternatives suggested by Trustee would frustrate their ability to obtain a fresh start through this bankruptcy, and undermine the principal purpose of the Bankruptcy Code.

No Enlargement of Time for Proofs of Claim

Even though IFIC timely amended Claim 26 under the order disallowing that disallowed it, such amendment did not resolve the defect causing its disallowance. At bottom, Claim 26 was late.

Rule 9006(b) permits enlargement of time for performing certain actions under limited circumstances. Under subsection (b)(3), the court may enlarge time for filing a proof of claim in a chapter 13 case only to the extent and under the conditions specified in Rule 3002(c). *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1432 (9th Cir. 1990) ("Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect."), citing *In re Pigott*, 684 F.2d 239, 242-43 n.2 (3d Cir. 1982).

However, "the Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid,' and the bankruptcy court lacks equitable power to extend this deadline after the fact." *Spokane Law Enf't Fed. Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1191 (9th Cir. 2016), citing *Gardenhire v. IRS (In re Gardenhire)*, 209 F.3d 1145, 1148 (9th Cir. 2000) ("Our precedents support the conclusion that a bankruptcy court lacks equitable discretion to enlarge the time to file proofs of claim; rather, it may only enlarge the filing time pursuant to the exceptions set forth in the Bankruptcy Code and Rules."); accord, *United States v. Osborne (In re Osborne)*, 76 F.3d 306, 308 (9th Cir. 1996); *Coastal Alaska Lines*, 920 F.2d at 1431-33; *Tomlan v. United States (In re*

Tomlan), 102 B.R. 790, 792, 796 (E.D. Wash. 1989), *aff'd*, 907 F.2d 114 (9th Cir. 1990).

Therefore, the deadline for filing Claim 26 cannot be enlarged. Even though IFIC was not notified of the bankruptcy in time to file Claim 26, lack of notification does not permit IFIC leave to file an untimely claim.

"Rule 3002(c) allows no exception to the filing deadline for a creditor who was not notified of the bankruptcy." *Jones v. Arross*, 9 F.3d 79, 81 (10th Cir. 1993) (finding that the bankruptcy court erred in allowing a creditor's late filed claim), citing *In re Wilson*, 90 B.R. 491, 492-93 (Bankr. N.D. Ala. 1988); *In re King*, 90 B.R. 155, 156, 158 (Bankr. E.D.N.C. 1988); *In re Chirillo*, 84 B.R. 120, 121-22 (Bankr. N.D. Ill. 1988).

Further, the Ninth Circuit has held that use of equitable powers under § 105(a) to enlarge the time to file a proof of claim by issuing any order, process, or judgment necessary or appropriate to carry out the provisions of the Bankruptcy Code "is inconsistent with the express limitations imposed by Rule 9006(b)(3) on the bankruptcy court's discretion to extend time." *Coastal Alaska Lines*, 920 F.2d at 1432; *accord*, *In re S.A. Morris Paving Co.*, 92 B.R. 161, 163 (Bankr. W.D. Va. 1998) (emphasis added); *In re Guarantee Elec., Inc.*, 91 B.R. 164, 165 (Bankr. M.D. Fla. 1988); *Wilson*, 90 B.R. at 493; *Miller v. Austin*, 72 B.R. 893, 894, 897-98 (S.D.N.Y. 1987).

So, as stated in the *Pre-Hearing Dispositions* dated March 9, 2017, the court lacks equitable discretion to enlarge the time for IFIC to file Amended Claim 26. An omitted creditor who did not receive notice or have actual knowledge of the bankruptcy to file a proof of claim has a remedy under § 523(a)(3)(A), *incorporated by* § 1328(a)(2).

"We are aware of the seeming harshness of this result. The Bankruptcy Code, however, specifically provides a remedy for persons in [IFIC's] situation. Because [it] was not listed among [Debtors'] creditors, [its] claim is nondischargeable. See 11 U.S.C. [§] 523(a)(3). [IFIC] may now petition the bankruptcy court for relief from the stay and bring an action against [Debtors], or [it] may wait until the case ends and bring such an action." *Jones v. Arross*, 9 F.3d at 81-82., citing *In re Pettibone Corp.*, 156 B.R. 220, 234-35 (Bankr. N.D. Ill. 1992); *In re Chirillo*, 84 B.R. 120, 122-23 (Bankr. N.D. Ill. 1988).

The court will not speculate on the outcome of any attempt by IFIC to pursue its claim. The only matter before the court is consideration of the Trustee's Final Report.

CONCLUSION

This matter will be called and proceed as scheduled. The court is inclined to OVERRULE the objection and APPROVE the Trustee's Final Report.

¹ Citations to "Doc." are to the docket of this bankruptcy case, Case No. 16-11473, and "AP Doc." are to the docket of IFIC's adversary proceeding, Adv. Proc. No. 17-01023.

² Unless otherwise indicated, references to "LBR" are to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rule" are to the Federal Rules of Bankruptcy Procedure; "Civ. Rule" are to the Federal Rules of Civil Procedure; and all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

³ See LBR (eff. Apr. 12, 2021), <http://www.caeb.uscourts.gov/LocalRules.aspx>.

⁴ *Stmt. of Info.* (Apr. 2, 2015) for Our Valley Fence, Inc., File No. 15-04873, Cal. Corp. No. C2885587, <https://businesssearch.sos.ca.gov/> (Mar. 24, 2022).

⁵ *In re Our Valley Fence, Inc.*, Case No. 16-11469-B-7.

⁶ *Pre-Hearing Dispositions* for the Honorable René Lastreto II (Apr. 6, 2017), http://www.caeb.uscourts.gov/documents/Judges/PreHearingDispositions/0406_880F_2017.pdf?dt=131514838 (Mar. 24, 2022).

⁷ *Pre-Hearing Dispositions* for the Honorable René Lastreto II (Mar. 9, 2017), http://www.caeb.uscourts.gov/documents/Judges/PreHearingDispositions/0309_880F_2017.pdf?dt=131514838, matter #23, at 10 (Mar. 24, 2022).

⁸ The certificate of service states that Trustee was served the *Order Authorizing Debtors to Settle Adversary Proceeding* on April 6, 2018, but such order was not entered until April 9, 2018. AP Docs. #41; #44. Trustee presumably received a copy of the proposed order rather than the actual order. Since Trustee was not a party to the case, it does not appear that he received a copy of the signed order entered April 9, 2018.

7. [22-10387](#)-B-13 **IN RE: MATTHEW/MARGARET TORRES**
[FW-1](#)

MOTION TO EXTEND AUTOMATIC STAY
3-15-2022 [7]

MARGARET TORRES/MV
GABRIEL WADDELL/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

Matthew Torres and Margaret Rose Torres ("Debtors") request an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #7.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the

respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay under subsection (a) shall terminate on the 30th day after the latter case is filed. Joint debtor Margaret Rose Torres had one case pending within the preceding one-year period that was dismissed: Case No. 21-12657-A-13. That case was filed on November 19, 2021 and voluntarily dismissed by *ex parte* motion on January 20, 2022 because changed circumstances necessitated including joint debtor Matthew Torres' in a joint bankruptcy. This case was filed on March 11, 2022. Doc. #1. The automatic stay will expire on April 10, 2022.

Debtors also have one other previous chapter 7 bankruptcy: Case No. 13-14090-A-7, filed on June 11, 2013. Debtors received a chapter 7 discharge on September 23, 2013, and the case was closed by final decree on September 27, 2017.

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

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

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith as to all creditors because Ms. Torres has more than one previous case under chapter 13 that was pending within the preceding one-year period. 11 U.S.C. § 362(c)(3)(C)(i)(III).

Ms. Torres declares that the previous bankruptcy was filed without her husband. Doc. #9. During the case, she was advised by the chapter 13 trustee that filing without Mr. Torres caused issues with the plan. Specifically, it created problems with the payment of Mr. Torres' vehicle, which is community property and needed to be paid through the plan. As result, Ms. Torres dismissed the previous chapter 13 case to file this case jointly with Mr. Torres. *Id.*

Debtors filed this case primarily to save their house. *Id.* The junior mortgage had a balloon payment fully due and payable prior to this filing, and they were unable to pay the lump sum due all at once. *Id.*

The chapter 13 plan filed with the petition proposes to pay the junior mortgage in full, as well as a vehicle, and the entirety of Debtors' priority and general unsecured claims. Doc. #3. The plan provides for 60 monthly payments of \$1,930.00 with a 100% dividend to allowed unsecured claims. *Id.* Debtors' updated *Schedules I* and *J* show that they receive \$6,510.58 in income and incur \$4,260.18 in expenses per month, for a monthly net income of \$2,250.40. Doc. #1, *Scheds. I, J*. This amount is sufficient to fund the current proposed plan. *Schedule I* also notes that Debtors do expect an increase or decrease within a year:

Debtor is employed by a union, but for recent months there has not been enough work to keep him busy and he has been on unemployment. He expects to remain on unemployment for the next few months, and hopes to be back on the job no later than April. When he is on the job, both his income and work-related expenses will increase.

Id., *Sched. I*, ¶ 13.

In contrast to the previous case, Debtors' income has changed as follows:

Case No.	Income	Expenses	Net
21-12657	\$6,707.60	\$5,299.68	\$1,407.92
22-10387	\$6,510.58	\$4,260.18	\$2,250.40
Change	- \$197.02	- \$1,039.50	+ \$842.48

Id. Income decreased slightly overall, but due to a reduction in expenses, Debtors' net income is higher in this case. Looking at each joint debtor's income individually reveals more information:

Case No.	Matthew Torres	Margaret Torres	Combined
21-12657	\$3,938.39	\$2,769.21	\$6,707.60
22-10387	\$1,800.00	\$4,710.58	\$6,510.58
Change in income	- \$2,138.39	+ \$1,941.37	- \$197.02

Id. Even though Debtors' combined income has decreased due to Mr. Torres' recent unemployment, Debtors' joint financial condition and circumstances have changed due to an increase in income for Ms. Torres.

Ms. Torres declares that this case was filed in good faith and Debtors intend to perform the chapter 13 plan to completion.

Based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted by clear and convincing evidence. Debtors' financial condition and circumstances have materially changed. Debtors' petition appears to have been filed in good faith. The court intends to grant the motion and extend the automatic stay as to all creditors provided that no opposition is presented at the hearing.

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

11:00 AM

1. [17-14112](#)-B-13 **IN RE: ARMANDO NATERA**
[FW-3](#)

CONTINUED FURTHER SCHEDULING CONFERENCE RE: MOTION FOR
SUMMARY JUDGMENT
9-14-2021 [[115](#)]

GABRIEL WADDELL/ATTY. FOR DBT.
REOPENED 6/5/20; RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 25, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of the parties' *Joint Status Report* filed in the related adversary proceeding. Adv. Proc. No. 20-01035 ("AP"), Doc. #266. Third-party Defendant WFG National Title Insurance Company ("WFG") has a motion to dismiss set for hearing on May 11, 2022. AP Docs. ##258-265. Until the pleadings on the third-party complaint are final, it is not possible to estimate a trial date or outstanding issues such as re-opening fact discovery, concluding the deposition of Maria Mills, naming expert witnesses, engaging in expert discovery, or filing other dispositive motions. Since the pleadings are not yet settled, this scheduling conference will be CONTINUED to May 25, 2022 at 11:00 a.m. to be heard after WFG's motion to dismiss third-party complaint. The parties may file joint or unilateral scheduling conference statements not later than 7 days before the hearing.

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

CONTINUED PRE-TRIAL CONFERENCE RE: MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-12-2020 [[76](#)]

SANDRA WARD/MV
GABRIEL WADDELL/ATTY. FOR DBT.
THOMAS TRAPANI/ATTY. FOR MV.
REOPENED 6/5/20; RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 25, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of the parties' *Joint Status Report* filed in the related adversary proceeding. Adv. Proc. No. 20-01035 ("AP"), Doc. #266. Third-party Defendant WFG National Title Insurance Company ("WFG") has a motion to dismiss set for hearing on May 11, 2022. AP Docs. ##258-265. Until the pleadings on the third-party complaint are final, it is not possible to estimate a trial date or outstanding issues such as re-opening fact discovery, concluding the deposition of Maria Mills, naming expert witnesses, engaging in expert discovery, or filing other dispositive motions. Since the pleadings are not yet settled, this pre-trial conference will be CONTINUED to May 25, 2022 at 11:00 a.m. to be heard after WFG's motion to dismiss third-party complaint. The parties may file joint or unilateral pre-trial conference statements not later than 7 days before the hearing.

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

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
12-23-2020 [\[92\]](#)

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

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

DISPOSITION: Continued to May 25, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of the parties' *Joint Status Report*. Doc. #266. Third-party Defendant WFG National Title Insurance Company ("WFG") has a motion to dismiss set for hearing on May 11, 2022. WEW-2. Until the pleadings on the third-party complaint are final, it is not possible to estimate a trial date or outstanding issues such as re-opening fact discovery, concluding the deposition of Maria Mills, naming expert witnesses, engaging in expert discovery, or filing other dispositive motions. Since the pleadings are not yet settled, this pre-trial conference will be CONTINUED to May 25, 2022 at 11:00 a.m. to be heard after WFG's motion to dismiss third-party complaint. The parties may file joint or unilateral pre-trial conference statements not later than 7 days before the hearing.

4. [17-14112](#)-B-13 **IN RE: ARMANDO NATERA**
[20-1035](#) [CAE-1](#)

STATUS CONFERENCE RE: THIRD-PARTY COMPLAINT
1-25-2022 [[246](#)]

NATERA V. BARNES ET AL
WILLIAM WINFIELD/ATTY. FOR PL.

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

DISPOSITION: Continued to May 25, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of the parties' *Joint Status Report*.
Doc. #266. Third-party Defendant WFG National Title Insurance Company ("WFG") has a motion to dismiss set for hearing on May 11, 2022.
WEW-2. Until the pleadings on the third-party complaint are final, it is not possible to estimate a trial date or outstanding issues such as re-opening fact discovery, concluding the deposition of Maria Mills, naming expert witnesses, engaging in expert discovery, or filing other dispositive motions. Since the pleadings are not yet settled, this status conference will be CONTINUED to May 25, 2022 at 11:00 a.m. to be heard after WFG's motion to dismiss third-party complaint. The parties may file joint or unilateral status conference statements not later than 7 days before the hearing.

5. [17-14112](#)-B-13 **IN RE: ARMANDO NATERA**
[20-1035](#) [FW-6](#)

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

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

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

DISPOSITION: Continued to May 25, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of the parties' *Joint Status Report*.
Doc. #266. Third-party Defendant WFG National Title Insurance Company ("WFG") has a motion to dismiss set for hearing on May 11, 2022.
WEW-2. Until the pleadings on the third-party complaint are final, it is not possible to estimate a trial date or outstanding issues such as re-opening fact discovery, concluding the deposition of Maria Mills,

naming expert witnesses, engaging in expert discovery, or filing other dispositive motions. Since the pleadings are not yet settled, this scheduling conference will be CONTINUED to May 25, 2022 at 11:00 a.m. to be heard after WFG's motion to dismiss third-party complaint. The parties may file joint or unilateral scheduling conference statements not later than 7 days before the hearing.

6. [17-14112](#)-B-13 **IN RE: ARMANDO NATERA**
[20-1035](#) [TAT-3](#)

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

NATERA V. BARNES ET AL
THOMAS TRAPANI/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 25, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of the parties' *Joint Status Report*. Doc. #266. Third-party Defendant WFG National Title Insurance Company ("WFG") has a motion to dismiss set for hearing on May 11, 2022. WEW-2. Until the pleadings on the third-party complaint are final, it is not possible to estimate a trial date or outstanding issues such as re-opening fact discovery, concluding the deposition of Maria Mills, naming expert witnesses, engaging in expert discovery, or filing other dispositive motions. Since the pleadings are not yet settled, this scheduling conference will be CONTINUED to May 25, 2022 at 11:00 a.m. to be heard after WFG's motion to dismiss third-party complaint. The parties may file joint or unilateral scheduling conference statements not later than 7 days before the hearing.

7. [20-10024](#)-B-7 **IN RE: SUKHJINDER SINGH**
[20-1036](#)

PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
7-21-2020 [[14](#)]

SALVEN V. SINGH ET AL
RUSSELL REYNOLDS/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

8. [17-10236](#)-B-13 **IN RE: PAUL/KATHLEEN LANGSTON**
[21-1043](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-23-2021 [1]

LANGSTON ET AL V. CALIFORNIA
DEPARTMENT OF DEVELOPMENTAL
GABRIEL WADDELL/ATTY. FOR PL.

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

DISPOSITION: Continued to April 7, 2022 at 11:30 a.m.

ORDER: The court will issue an order.

Debtors Paul Dayton Langston and Kathleen Louise Langston ("Plaintiffs") filed and served a *Motion for Entry of Default Judgment Against Defendant California Department of Developmental Services*, which is set for a prove-up hearing on April 7, 2022. Docs. ##19-27; FW-1. Accordingly, this status conference will be continued to April 7, 2022 at 11:30 a.m. to be heard in connection with the prove-up hearing.

9. [20-11296](#)-B-7 **IN RE: KYLE/DEANNA MAURIN**
[20-1044](#)

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

KAPITUS SERVICING, INC. V.
MAURIN
MICHAEL MYERS/ATTY. FOR PL.
CONT'D TO 4/20/22 PER ECF ORDER #88

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

DISPOSITION: Continued to April 22, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The parties reached an agreement to settle the adversary proceeding and need additional time to finalize the settlement agreement. Accordingly, the parties stipulated to continue the pre-trial conference to April 20, 2022. Doc. #87. The court approved the stipulation on March 15, 2022 and continued the pre-trial conference to April 20, 2022. Doc. #88. However, the court does not have a regularly scheduled calendar on April 20, 2022, so the court will issue an order continuing the pre-trial conference to April 22, 2022 at 11:00 a.m. The deadline for Plaintiff to file its pre-trial statement is extended through and including April 6, 2022, and the

deadline for Defendant to do the same is extended through and including April 13, 2022. *Id.*

10. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1123](#) [CAE-1](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
12-19-2019 [[11](#)]

TULARE LOCAL HEALTHCARE
DISTRICT V. MEDLINE
MICHAEL WILHELM/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

The court is in receipt of Plaintiff and Defendant's timely filed pre-trial statements. This pre-trial conference will be called and proceed as scheduled. The parties shall be prepared to discuss upcoming scheduling.