



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, April 4, 2024
Department A - Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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.

9:00 AM

1. [23-12406](#)-A-13 **IN RE: ROBERT SMITH**
[DMG-1](#)

CONTINUED MOTION TO CONFIRM PLAN
1-26-2024 [[38](#)]

ROBERT SMITH/MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING
CONVERTED TO CH. 7 - 3/28/24

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This motion is OVERRULED AS MOOT. The debtor's case was converted to one under chapter 7 on March 29, 2024. Doc. #62.

2. [22-11711](#)-A-13 **IN RE: CHRISTINA MARTINEZ**
[LGT-1](#)

CONTINUED MOTION TO DISMISS CASE
2-5-2024 [[46](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Trustee withdrew the motion on March 28, 2024. Doc. #61.

3. [23-11229](#)-A-13 **IN RE: DUNCAN NORWOOD**
[LGT-1](#)

CONTINUED MOTION TO DISMISS CASE
1-25-2024 [[93](#)]

LILIAN TSANG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

On January 25, 2024, the chapter 13 trustee ("Trustee") moved to dismiss this bankruptcy case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor had failed to confirm a plan. Doc. #93. The debtor responded on February 15, 2024, stating that the debtor had filed a motion to confirm a third modified plan that was set for hearing on April 4, 2024. Doc. #105. On February 15, 2024, the debtor filed and served a motion to confirm the debtor's third modified plan and set that motion for hearing on April 4, 2024. Doc. ##99-104. That motion has been granted by final ruling, matter #4 below.

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). It appears that confirmation of the debtor's third modified plan satisfies all outstanding grounds for Trustee's motion to dismiss, so there is no "cause" for dismissal under 11 U.S.C. § 1307(c)(1).

Accordingly, unless withdrawn prior to the hearing, this motion will be DENIED.

4. [23-11229](#)-A-13 **IN RE: DUNCAN NORWOOD**
[RSW-4](#)

MOTION TO CONFIRM PLAN
2-15-2024 [[99](#)]

DUNCAN NORWOOD/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(1). 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). 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.

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

5. [23-12130](#)-A-13 **IN RE: PAMELA MULLEN**
[RSW-1](#)

OBJECTION TO CLAIM OF DEPARTMENT OF TREASURY INTERNAL REVENUE SERVICE,
CLAIM NUMBER 1
2-29-2024 [[34](#)]

PAMELA MULLEN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection to claim #1 on March 21, 2024. Doc. #46.

6. [23-12130](#)-A-13 **IN RE: PAMELA MULLEN**
[RSW-2](#)

MOTION TO CONFIRM PLAN
2-29-2024 [[38](#)]

PAMELA MULLEN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 9, 2024 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice prior to the hearing date as required by Local Rule of Practice 3015-1(d)(1). The chapter 13

trustee ("Trustee") filed an objection to the debtor's motion to confirm the chapter 13 plan. Tr.'s Opp'n, Doc. #44. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than April 18, 2024. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by April 25, 2024.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than April 25, 2024. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

7. [24-10252](#)-A-7 **IN RE: JOSE SALAZAR**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BRIDGECREST CREDIT COMPANY, LLC
2-28-2024 [[18](#)]

BRIDGECREST CREDIT COMPANY, LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.
CONVERTED TO CH. 7 - 3/12/24

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor's case was converted to one under chapter 7 on March 12, 2024. Doc. #34.

8. [24-10252](#)-A-7 **IN RE: JOSE SALAZAR**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BRIDGECREST CREDIT COMPANY, LLC
2-29-2024 [[22](#)]

BRIDGECREST CREDIT COMPANY, LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.
CONVERTED TO CH. 7 - 3/12/24

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor's case was converted to one under chapter 7 on March 12, 2024. Doc. #34.

9. [24-10252](#)-A-7 **IN RE: JOSE SALAZAR**
[CAS-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY BRIDGECREST CREDIT COMPANY, LLC
3-11-2024 [[26](#)]

BRIDGECREST CREDIT COMPANY, LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.
CONVERTED TO CH. 7 - 3/12/24

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor's case was converted to one under chapter 7 on March 12, 2024. Doc. #34.

10. [24-10252](#)-A-7 **IN RE: JOSE SALAZAR**
[CAS-4](#)

OBJECTION TO CONFIRMATION OF PLAN BY BRIDGECREST CREDIT COMPANY, LLC
3-11-2024 [[30](#)]

BRIDGECREST CREDIT COMPANY, LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.
CONVERTED TO CH. 7 - 3/12/24

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor's case was converted to one under chapter 7 on March 12, 2024. Doc. #34.

11. [23-12466](#)-A-13 **IN RE: MARIO HUNTER**
[MHM-2](#)

MOTION TO CONFIRM PLAN
3-1-2024 [[40](#)]

MARIO HUNTER/MV
ERIKA LUNA/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on March 28, 2024. Doc. #45.

12. [18-12667](#)-A-13 **IN RE: SAMANTHA JOHNSON**
[LGT-1](#)

CONTINUED MOTION TO DISMISS CASE
1-22-2024 [[85](#)]

LILIAN TSANG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

13. [23-12071](#)-A-13 **IN RE: MARYLOU ROMERO**
[RSW-1](#)

CONTINUED MOTION TO CONFIRM PLAN
1-4-2024 [[24](#)]

MARYLOU ROMERO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING BY TRUSTEE WITHDRAWN

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The chapter 13 trustee ("Trustee") timely opposed this motion but withdrew the opposition after the debtor agreed to have Trustee's opposition addressed in the confirmation order. See Am. Opp'n, Doc. #40; Reply, Doc. #53; Supp. Opp'n, Doc. #57; Opp'n Withdrawal, Doc. #63. 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). Therefore, the defaults of the non-responding parties in interest are entered. 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). 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.

Marylou Romero ("Debtor"), the chapter 13 debtor in this case, moves the court to confirm Debtor's first modified chapter 13 plan. Doc. #24. Trustee initially objected because the proposed plan payments under the modified plan failed to pay secured claims and Trustee's compensation in full. Am. Opp'n, Doc. #40.

Per a reply filed on February 21, 2024, Debtor can afford a higher plan payment starting in month 4 that will address Trustee's objection. Reply, Doc. #53. Trustee subsequently withdrew the opposition. Opp'n Withdrawal, Doc. #63.

Based on Debtor's consent, the motion to confirm Debtor's first modified plan is GRANTED. The proposed confirmation order shall reflect the agreed change to the plan payments, shall include the docket control number of the motion, and shall reference the plan by the date the plan was filed.

14. [23-12474](#)-A-13 **IN RE: KRISTIN WINSOR**
[LGT-1](#)

MOTION TO DISMISS CASE
2-26-2024 [46]

LILIAN TSANG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part; the case will be converted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor filed timely opposition on March 20, 2024. Doc. #50. 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). Therefore, the defaults of the non-responding parties in interest are entered. The matter will proceed as scheduled.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c) for the debtor's failure to: (1) appear at the 341 meeting of creditors held on February 20, 2024; (2) file a modified plan with notice to creditors after a creditor objection to the debtor's prior plan was sustained; (3) provide the trustee with a copy of the debtor's most recently filed tax return and evidence of payments to Class 1 claims; (4) commence making plan payments; and (5) file tax returns for the year 2018. Doc. #46.

The debtor opposes the motion to dismiss, without providing any supporting evidence, asserting that the debtor did appear at one 341 meeting of creditors and the meeting is now concluded. Doc. #50. The debtor has provided her most recently filed tax return for 2017 and does not believe she is required to file a tax return for 2018 due to lack of income. Id. The debtor concedes that she has not made any plan payments and is unable to do so due to lack of income. Id. The debtor also concedes that there would be funds available to pay unsecured creditors in a chapter 7 bankruptcy case. Id. The debtor requests she be given time to propose a modified plan based on the sale of her residence and payment of her non-exempt equity to unsecured creditors. Id.

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 for failing to timely confirm a chapter 13 plan and under 11 U.S.C. § 1307(c)(4) for failing to commence making timely payments as required by 11 U.S.C. § 1326.

A review of the debtor's Schedules A/B, C and D shows that while the debtor claims a homestead exemption in the real property, there is equity in that property beyond the scheduled encumbrances and the claimed exemption. In addition, there is \$10,650 in value for a note held by the debtor. Am. Schedule A/B, Doc. #37. Based on the potential liquidation value of these items, there appears to be significant non-exempt equity in the debtor's assets to be realized for the benefit of the estate if the debtor's bankruptcy case is converted to chapter 7 instead of being dismissed. Moreover, the debtor intends to liquidate her real property in order to pay her creditors. Doc. #50. Thus, the court finds that conversion, rather than dismissal, is in the best interests of creditors and the estate.

Accordingly, the motion will be GRANTED IN PART, and the case will be converted.

15. [23-10684](#)-A-13 **IN RE: CHERYL MELIZA LOPEZ**
[LGT-1](#)

CONTINUED MOTION TO DISMISS CASE
2-5-2024 [[50](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to May 9, 2024 at 9:00 a.m.

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

The court previously continued the hearing on this motion to dismiss to permit the debtor to file a motion to approve a modified plan. The court is inclined to continue the trustee's motion to dismiss to May 9, 2024 at 9:00 a.m., to be

heard in connection with the debtor's motion to confirm her latest chapter 13 plan (RSW-2) also set for hearing on that date and time. Doc. ##63-68.

16. [24-10086](#)-A-13 **IN RE: NOEMI HERNANDEZ ARREDONDO**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
3-12-2024 [[24](#)]

CAPITAL ONE AUTO FINANCE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

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

Noemi Hernandez Arredondo ("Debtor") filed the Chapter 13 Plan (the "Plan") on February 3, 2024. Doc. #17. Secured creditor Capital One Auto Finance, a division of Capital One, N.A. ("Creditor"), objects to confirmation of the Plan because the Plan proposes to reduce the interest rate on Creditor's Class 2 claim from the contract rate of 8.99% to 7%. Plan, Doc. #17; Doc. #24. Creditor does not consent to the interest rate reduction and argues that the proposed reduction fails to pay the applicable contractual interest rate. Doc. #24.

The proper interest rate to be paid to secured creditors under a chapter 13 plan is governed by Till v. SCS Credit Corp., 541 U.S. 465 (2004). The Till "formula approach" requires an interest rate "high enough to compensate the creditor for its risk but not so high as to doom the plan." Id. at 480. This is referred to as the "formula" or "prime-plus" rate, which the Supreme Court held best comports with the purposes of the Bankruptcy Code in the chapter 13 context. Id. at 479-80. It is generally acknowledged that this approach starts with the national prime rate, which is then adjusted based on a number of factors. As of March 27, 2024, the Wall Street Journal Prime Rate is 8.5%. The court can take judicial notice of the prime rates published in the Wall Street Journal. Stein v. JP Morgan Chase Bank, 297 F. Supp. 2d 286, 290 (S.D.N.Y. 2003); Fed. R. Evid. 201.

While the Supreme Court in Till enunciated some factors to consider in adjusting the "prime-plus" rate upward, the Supreme Court also acknowledged some factors contribute to a reduction in risk (though not necessarily a rate less than prime). Till, 541 U.S. at 475 n.12. The Supreme Court in Till also noted that "if the court could somehow be certain a debtor would complete his plan, the prime rate would be adequate to compensate any secured creditors forced to accept cram down loans." Till, 541 U.S. at 479 n.18. The actual risk adjustment percentage was not decided in Till; however, the Supreme Court did

state that courts have generally approved adjustments between 1%-3% in addition to the national prime rate. Till, 541 U.S. at 480.

Creditor argues that the Plan must provide the contractual rate of interest, but that is not the standard under Till. Because the court agrees that setting the interest rate on Creditor's claim below the current prime rate of interest does not satisfy Till, Creditor's objection to confirmation will be sustained.

Accordingly, the court is inclined to SUSTAIN Creditor's objection to confirmation of the Plan.

17. [23-11770](#)-A-13 **IN RE: GABRIELA PORTILLO**
[RSW-3](#)

MOTION TO VACATE DISMISSAL OF CASE
3-21-2024 [[48](#)]

GABRIELA PORTILLO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
DISMISSED 03/15/2024

NO RULING.

1. [23-12473](#)-A-7 **IN RE: GEORGE/PATRICIA ROSALES**
[UST-1](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF
THE DEBTOR
2-20-2024 [[28](#)]

TRACY DAVIS/MV
JOSEPH PEARL/ATTY. FOR DBT.
JORGE GAITAN/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, 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 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.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"), moves for an order extending the time for filing a complaint objecting to the discharge of George Rosales ("Debtor") in this chapter 7 bankruptcy case under 11 U.S.C. § 727. Doc. #28. UST is not seeking an extension of the deadline as to joint debtor Patricia Rosales. Id.

Federal Rule of Bankruptcy Procedure ("FRBP") 4004(b)(1) provides that, "[o]n motion of any party in interest, after notice and a hearing, the court may for cause extend the time to object to discharge." Similarly, FRBP 1017(e)(1) allows the court, "for cause" to extend the time for filing a motion to dismiss under 11 U.S.C. § 707(b). UST's motion was filed within sixty days of the first date set for the meeting of creditors and is timely.

After review of the included evidence, the court finds that "cause" exists to extend the time for filing a complaint objecting to Debtor's discharge under 11 U.S.C. § 727 because Debtor testified at the continued 341 meeting of creditors held on January 19, 2024 that Debtor had assisted in the filing of bankruptcy cases for other debtors and did not comply with the duties and requirements of a bankruptcy petition preparer. Decl. of Jorge A. Gaitan, Doc. #30. UST needs additional time to investigate the extent of Debtor's noncompliance as a bankruptcy petition preparer under 11 U.S.C. § 110, to determine the extent of harm to bankruptcy cases in which Debtor assisted in

filing and appropriate penalties that may need to be issued, and to determine whether an action of 11 U.S.C. § 727 is warranted. Doc. #28.

Accordingly, this motion is GRANTED. The time for UST to file a complaint objecting to the discharge of debtor George Rosales only is extended to June 20, 2024.

10:30 AM

1. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
10-5-2021 [[1](#)]

IGNACIO LAZO/ATTY. FOR DBT.

NO RULING.

2. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
[IJL-11](#)

MOTION TO AMEND PRIOR RETAINER ORDER AND/OR MOTION TO DISMISS CASE
3-14-2024 [[277](#)]

JUAREZ BROTHERS INVESTMENTS, LLC/MV
IGNACIO LAZO/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally 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 21 days' notice prior to the hearing date pursuant to Federal Rules of Bankruptcy Procedure 1017 and 2002 and 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 conditioned upon the debtor filing all monthly operating reports due as of the date of dismissal. 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.

As a procedural matter, the motion does not comply with LBR 9014-1(d)(5), which requires every request for an order to be filed separately from every other request. Here, the motion filed by the debtor requests that the court amend a prior order as well as dismiss the debtor's chapter 11 bankruptcy case. Doc. #277. The debtor should have filed two separate motions.

As a further procedural matter, the certificate of service filed in connection with this motion does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022.

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules>

Juarez Brothers Investments, LLC ("DIP") moves the court to (a) amend the order granting authorizing DIP to accept a third-party post-petition retainer and permit a third party to pay attorney's fees for DIP's bankruptcy counsel ("Order") entered on July 11, 2022 (Doc. #129), and (b) dismiss this chapter 11 bankruptcy case. Doc. #277.

Request to Amend the Order

Federal Rule of Civil Procedure ("Rule") 60(b)(6), made applicable in this bankruptcy case by Federal Rule of Bankruptcy Procedure 9024, permits relief from a judgment or order for "any other reason that justifies relief." A motion under Rule 60(b)(6) must be made "within a reasonable time." Fed. R. Civ. P. 60(c). "To justify relief under subsection (6) of Rule 60(b) a party must show extraordinary circumstances suggesting a party is faultless in the delay." Pioneer Inv. Servs. V. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380 (1993). Rule 60(b)(6) is to be liberally applied to accomplish justice. Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.), 503 F.3d 933, 941 (9th Cir. 2007).

The Order authorizes the attorney's fees of DIP's bankruptcy counsel to be paid by a third party, Salvador Rodriguez, in lieu of payment from property of the estate. Doc. #129. Paragraph 4 of the Order states: "Pursuant to 11 U.S.C. §§ 328, 329, and 330, any further compensation to Legal Counsel to be paid by Mr. Rodriguez must first be reviewed and approved by the Court." Id.

On May 4, 2023, the court approved a settlement between DIP and Grimmway Enterprises, Inc. ("Creditor") providing that Creditor would release its deed of trust on real property of the estate ("Property") in exchange for a payment of \$1,500,000.00 by September 8, 2023. Ex. A, Doc. #196; Doc. ##205, 238. The Property was DIP's primary asset. Doc. #31. DIP did not make this payment by September 8, 2023, and Creditor was accorded the right to complete its trustee's sale of the Property. Decl. of Ignacio J. Lazo, Doc. #279.

Based on the pending foreclosure by Creditor, DIP informed the court that, as of November 8, 2023, counsel for DIP intended to file a final fee application coupled with a motion to dismiss DIP's chapter 11 case. Status Report, Doc. #243. The court continued the status conference to January 4, 2024 to permit such motions to be prepared, filed and served. Doc. #232-234. Unfortunately, the continued ill health of Richard Reincke, the paralegal assigned to draft the final fee application on behalf of DIP's bankruptcy counsel, precluded the final fee application from being completed. Decl. of Richard C. Reincke, Doc. #257. The court continued the status conference to March 7, 2024 to permit such motions to be prepared, filed and served. Doc. #259-260, 263. Those motions were not prepared, filed and served prior to the continued chapter 11 status conference. On March 14, 2024, DIP filed this motion seeking relief from that portion of the Order requiring this court to review and approve the attorney's fees for DIP's counsel prior to Mr. Rodriguez paying such fee and dismissing this chapter 11 bankruptcy case. Doc. #277.

As an initial matter, the court finds that the motion to amend was made within a reasonable time. The issue of the need to file a final fee application in order to dismiss this bankruptcy case first arose at the chapter 11 status conference held on November 8, 2023. This court only holds calendars for matters arising in Bakersfield once a month so the filing of a motion to amend the Order in March 2024, after having given DIP time to prepare, file and serve a final fee application, has been made within a reasonable time.

Further, based on the loss of DIP's primary asset to foreclosure, the circumstances of Mr. Reincke's ill-health preventing DIP from preparing, filing and serving a final fee application and the delay in dismissing this chapter 11

case as a result thereof, the court finds grounds exist under Rule 60(b)(6) to grant the motion to amend the Order by striking paragraph 4.

Request to Dismiss Chapter 11 Case

Turning to DIP's request to dismiss its chapter 11 bankruptcy case, any party in interest, including the debtor, may move to dismiss a chapter 11 bankruptcy case. 11 U.S.C. § 1112(b)(1). After notice and a hearing, the court may dismiss a chapter 11 case for "cause" unless the court finds "unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate." 11 U.S.C. § 1112(b)(1), (2).

"Dismissal of a chapter 11 case under 11 U.S.C. § 1112(b) requires a two-step analysis." Moore v. United States Tr. For Region 16 (In re Moore), 583 B.R. 507, 511 (C.D. Cal. 2018). It must first be determined that there is "cause" to act, and it then must be determined that dismissal, rather than conversion to chapter 7, is in the best interests of the creditors and the estate. Id. (citing Nelson v. Meyer (In re Nelson), 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006)). While § 1112(b)(4) of the Bankruptcy Code identifies specific conduct constituting cause, "bankruptcy courts may look beyond 11 U.S.C. § 1112(b)(4) and 'consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" Id. at 512 (quoting Pioneer Liquidating Corp. v. United States Tr. (In re Consol. Pioneer Mortg. Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000)).

The court finds that cause exists to dismiss DIP's chapter 11 case because there is no reasonable likelihood of rehabilitation of DIP due to the foreclosure of DIP's primary asset. Lazo Decl., Doc. #279. The court also finds that dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate. Accordingly, cause exists to dismiss DIP's chapter 11 case pursuant to § 1112(b) of the Bankruptcy Code.

However, LBR 2015-1(a)(1) and (c) require chapter 11 debtors to file monthly operating reports "not later than the fourteenth (14th) day of the month following the month of the reported period. Reports shall be filed for the portion of a calendar month from the date of filing, and monthly thereafter through the month in which an order of confirmation, conversion or dismissal is entered. If the portion of a calendar month from the date of filing is seven (7) days or less, the report for such period may be combined with the report due for the following calendar month." LBR 2015-1(c). A review of the docket shows that DIP's chapter 11 case was filed on October 5, 2021, and the monthly operating reports are current only through December 2023. The court is inclined to condition dismissal on DIP being current in the filing of its monthly operating reports.

The court is inclined to grant DIP's request to amend the Order (Doc. #129) by striking paragraph 4 to allow a third party to pay outstanding attorneys' fees incurred on behalf of DIP to be paid without this court's review and approval and to permit dismissal of DIP's chapter 11 case conditioned on DIP filing all monthly operating reports due as of the time DIP's bankruptcy case is dismissed.

3. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
[UST-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 (FILING FEE NOT PAID OR NOT REQUIRED), MOTION TO DISMISS CASE
3-12-2024 [[272](#)]

TRACY DAVIS/MV
IGNACIO LAZO/ATTY. FOR DBT.
JORGE GAITAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This bankruptcy case likely will be dismissed pursuant to calendar matter #2 above. If that is the case, this motion will be DENIED AS MOOT.

1. [23-12711](#)-A-7 **IN RE: JEREMIAH/JAYCEE ESTRADA**

PRO SE REAFFIRMATION AGREEMENT WITH DESERT VALLEYS FCU
2-22-2024 [[14](#)]

NEIL SCHWARTZ/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The reaffirmation agreement between debtors and Desert Valleys FCU was withdrawn on March 15, 2024. Doc. #17.

2. [23-12943](#)-A-7 **IN RE: SAMUEL/FRANCES SALCEDO**

REAFFIRMATION AGREEMENT WITH LAKEVIEW LOAN SERVICING, LLC
3-7-2024 [[20](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

The debtor's counsel shall notify the debtor that no appearance is necessary.

No hearing or order is required. The form of the reaffirmation agreement complies with 11 U.S.C. §§524(c) and 524(k), and it was signed by the debtors' attorney with the appropriate attestations. Pursuant to 11 U.S.C. §524(d), the court need not approve the agreement.