

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, April 6, 2022
Place: Department B – 510 19th Street
Bakersfield, California

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

Pursuant to District Court General Order 631, courthouses for the Eastern District of California will be reopened to the public effective June 14, 2021.

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, **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. [19-13907](#)-B-13 **IN RE: JAVIER JAIME AND LILIANA LUIS**
[RSW-4](#)

MOTION TO MODIFY PLAN
2-14-2022 [[116](#)]

JAVIER JAIME/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 4, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

Javier Osvaldo Jaime and Liliana Aide Luis ("Debtors") seek an order confirming the Third Modified Chapter 13 Plan (Doc. #120) filed February 14, 2022. Doc. #116. The proposed plan provides that Debtors have paid a total of \$62,024.00 in plan payments through February 2022, and beginning March 2022, the payment will be \$2,600.00 per month for the remainder of the 60-month plan. Doc. #120, § 7.01. The plan contemplates a 0% dividend to be distributed to allowed, non-priority unsecured claims. *Id.*, § 3.14.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objects under 11 U.S.C. § 1325(a)(6) because the debtors will not be able to make all payments under the plan and comply with the plan. Doc. #124. Trustee objects on grounds of feasibility because Debtors' *Amended Schedules I and J* show that Debtors' monthly net income is \$2,560.54, but the proposed monthly payment is \$2,600.00, so it appears that Debtors do not have the disposable income to afford the proposed plan payment. *Id.*; cf. Doc. #122, *Am. Sched. J*, ¶ 23c.

Additionally, Trustee notes that the plan has 31 months remaining as of March 2022, but the plan will take 34.55 months to fund. Thus, the payment would have to increase to \$2,695.00 beginning March 2022 to fund the plan over the 31 remaining months. *Id.*

This motion will be CONTINUED to May 4, 2022 at 9:00 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtors shall file and serve a written response not later than April 20, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtors' position. Trustee shall file and serve a reply, if any, by April 27, 2022.

If Debtors elect 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 27, 2022. If Debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

2. [21-11443](#)-B-13 **IN RE: CARLOS DELGADILLO**
[MHM-4](#)

MOTION TO DISMISS CASE
2-15-2022 [[60](#)]

MICHAEL MEYER/MV
JASON VOGELPOHL/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 #60. 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*

Systems, 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 confirm a Chapter 13 Plan. Debtor set a plan for hearing on two separate dates, the first on August 12, 2021 (Doc. #20) and again on November 19, 2021 (Doc. #43). Both plans were denied. See Docs. #38, #53.

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 there was no nonexempt equity available to benefit the estate. Doc. #60.

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

3. [21-12355](#)-B-13 **IN RE: MONICA RAMOS**
[MHM-2](#)

MOTION TO DISMISS CASE
2-11-2022 [[45](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to May 4, 2022 at 9:30 a.m.

ORDER: The minutes of the hearing will be the court's findings and conclusions. 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. #45. Trustee declares that Debtor has failed to make all required payments due under the plan. Payments are delinquent in the amount of

\$5,00.00 as of February 11, 2022, and two additional payments of \$2,500.00 will become due before the hearing, for a total of \$10,000.00. Doc. #47.

Monica Marcella Ramos ("Debtor") timely responded. Doc. #52. Debtor is unable to become current and intends to file a motion to modify plan. On this basis, Debtor asks the court to deny this motion.

Debtor filed the First Modified Chapter 13 Plan on March 29, 2022, which is set for hearing on May 4, 2022. See RSW-2. The 60-month plan provides that Debtor shall pay \$2,500.00 in payments through March 2022, and beginning April 2022, the monthly payment shall increase to \$2,755.00 through the remainder of the plan. Doc. #58, § 7.01.

This matter will be called to confirm whether Debtor has commenced making plan payments by paying \$2,500.00 through March 2022. The court is inclined to CONTINUE this motion to May 4, 2022 to be heard with the motion to confirm the First Modified 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)(4) for failing to commence making plan payments.

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors. Debtor is delinquent in the amount of \$5,000.00, with two additional payments due before this hearing. Doc. #47. However, Debtor's proposed First Modified Plan reduces the amount due through March 2022 to \$2,500.00.

In addition to the delinquency described above, Trustee has reviewed the schedules and determined that there are no non-exempt, unencumbered assets that could be liquidated for the benefit of unsecured claims if the case were converted to chapter 7. Doc. #45. Debtor's schedules indicate that Debtor's real property and vehicles are over encumbered, and the remaining assets are exempted entirely.

Thus, dismissal, rather than conversion, serves the interests of creditors and the estate.

This matter will be called to confirm whether Debtor has cured the \$2,500.00 delinquency required by the proposed First Modified Plan. If Debtor has paid the \$2,500.00, this motion may be CONTINUED to May 4, 2022 to be heard with the motion to modify plan. But if Debtor has not paid the \$2,500.00 required by the First Modified Plan, the motion may be GRANTED unless Debtor can, with competent evidence, establish a material factual dispute.

4. [21-12757](#)-B-13 **IN RE: BRYAN REED AND EMMA NIEVA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
3-15-2022 [\[22\]](#)

VINCENT GORSKI/ATTY. FOR DBT.

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

DISPOSITION: Continued to May 4, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of Bryan Eugene Reed's and Emma Rose Saldonido Nieva's ("Debtors") chapter 13 plan because it fails to provide the same treatment of claims classified within a particular class as required by 11 U.S.C. § 1322(a)(3). Doc. #22.

This objection will be CONTINUED to May 4, 2022 at 9:00 a.m.

Section 5.02 governs plan distribution. At minimum, each monthly plan payment must pay in full: (1) Trustee's fees; (ii) post-petition monthly payments on Class 1 claims; (iii) the monthly dividend for section 3.06 administrative expenses; and (iv) the monthly dividends payable on Class 1 arrearage claims, Class 2 claims, and executory contract and unexpired lease arrearage claims. Doc. #8, § 5.02(a). If funds remain after payment of all monthly dividends, then the remainder shall be paid pro rata, first to holders of Class 1 arrearage claims, Class 2 claims, and executory contract and unexpired lease arrearage claims; second to Class 5 priority claims; third to Class 6 unsecured claims; and fourth to Class 7 unsecured claims. *Id.*, § 5.02(c).

Trustee objects to Debtors' proposed additional provisions in section 7.01 of the plan, which attempts to create separate classes of Class 7 general unsecured claims that are treated differently. Doc. #22. Specifically, Trustee objects to the second class of unsecured

creditors, which consists of an unsecured and non-deeded timeshare creditor, Worldmark, in the amount of \$39,754.00. Worldmark has a fixed monthly payment of \$581.18 per month, with the last payment due before completion of the plan. Per additional provision 7.01, Worldmark shall be paid \$581.18 per month by Trustee. However, Worldmark is affiliated with Wyndham Resort Development, Inc. ("Wyndham"). Wyndham filed Proof of Claim No. 17 on January 31, 2022 as a secured claim in the amount of \$40,421.01. Thus, Wyndham/Worldmark will not receive treatment through the plan because it is not an unsecured claim. Despite this lack of treatment, Trustee felt compelled to object should Wyndham/Worldmark amend Claim 17 in the future, since it will not receive a specific dividend under section 5.02 of the plan. *Id.*

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtors shall file and serve a written response not later than April 20, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtors' position. Trustee shall file and serve a reply, if any, by April 27, 2022.

If Debtors elect 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 27, 2022. If Debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

5. [17-10884](#)-B-13 **IN RE: MANUEL GALLEGOS**
[PK-3](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
3-9-2022 [[65](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Patrick Kavanagh ("Applicant"), counsel for Manuel Gallegos ("Debtor"), requests final compensation under 11 U.S.C. § 330 in the sum of \$500.00 for services rendered from September 14, 2017 through the close of the case. Doc. #65. Applicant also seeks final approval of interim compensation previously awarded on October 5, 2017 in the sum of \$5,160.00. *Id.*

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

The notice of hearing (Doc. #66) was not served on all parties in interest. Doc. #68. LBR 9014-1(e) requires the movant to serve all pleadings and documents filed in support of a motion on or before the day they are filed, with proof of service in the form of a certificate of service to be filed with the clerk concurrently with the pleadings or documents served, or not more than three days after they are filed. LBR 9014-1(e) (1), (2).

Here, the *Certificate of Service* indicates that the following documents were served on March 8, 2022:

1. *Application for Allowance of Payment of Fees and/or Expenses Pursuant to 11 USC §331 OR §330 Filed by Attorneys for Debtor in Chapter 13 Case* (Doc. #65); and
2. *Exhibits in Support of Application* (Doc. #67).

Doc. #68. However, the *Notice of Application for Allowance of Payment of Fees and/or Expenses Pursuant to 11 U.S.C. §331 or §330* (Doc. #66) was not served. This document notifies respondents of the time, date, and location of the hearing, instructs whether or when written opposition is required and to whom and where such opposition should be served, and provides information about the checking the pre-hearing dispositions on the court's website. See LBR 9014-1(d)(3)(B) and (f)(1)(B). Since the notice was not properly served on all parties in interest, those required disclosures would not have been received by potential respondents.

Additionally, Rule 2002(a)(6) requires at least 21 days' notice to all parties in interest of any hearing on a request for compensation exceeding \$1,000.00. Though this request only requests interim approval of \$500.00, it also seeks final approval of \$5,160.00 previously awarded. Thus, all parties must be timely notified of the hearing.

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

10:00 AM

1. [21-12800](#)-B-7 **IN RE: JOSE/LORRAINE DUARTE**
[RSW-1](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
3-9-2022 [\[21\]](#)

JOSE DUARTE/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.

Jose Jaime Duarte and Lorraine Maribel Duarte ("Debtors") seek to avoid a judicial lien in favor of Portfolio Recovery Associates, LLC ("Creditor") in the sum of \$2,332.06 and encumbering residential real property located at 12612 Andes Ave., Bakersfield, CA 93312 ("Property").¹

No party in interest timely filed written opposition. This motion will be GRANTED.

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 chapter 7 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 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.

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property

listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against joint debtor Lorraine Duarte in favor of Creditor in the sum of \$2,332.06 on June 8, 2021. Doc. #24, Ex. 4. The abstract of judgment was issued on June 16, 2021 and recorded in Kern County on June 30, 2021. *Id.* That lien attached to Debtors' interest in Property and appears to be the only non-consensual judgment lien encumbering Property. Docs. #1, *Sched. D*; #23.

As of the petition date, Property had an approximate value of \$378,600.00. *Id.*; Doc. #1, *Sched. A/B*. Property is encumbered by a single \$165,042.00 deed of trust in favor of Select Portfolio Servicing, Inc. *Id.*, *Sched. D*. Debtors claimed a "homestead" exemption in Property pursuant to Cal. Code Civ. Proc. § 704.730 in the amount of \$300,000.00. *Id.*, *Sched. C*.

Strict application of the § 522(f)(2) formula is as follows:

Amount of Creditor's judicial lien	\$2,332.06
Total amount of unavoidable liens	+ \$165,042.00
Amount of Debtors' claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$467,374.06
Debtors' claimed value of interest absent liens	- \$378,600.00
Amount Creditor's lien impairs Debtor's exemption	= \$88,774.06

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	\$378,600.00
Total amount of unavoidable liens	- \$165,042.00
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$86,442.00)
Creditor's original judicial lien	- \$2,332.06
Extent Debtor's exemption impaired	= (\$88,774.06)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

¹ Debtors complied with Fed. R. Bankr. P. 7004(b)(3) by serving the following parties on March 9, 2022: (a) CSC - Lawyers Incorporating Service, Creditor's registered agent for service of process, by regular U.S. mail at 2710 Gateway Oaks Drive, Ste. 150N, Sacramento, CA 95833; (b) Kevin P. Stevenson, Creditor's President and CEO, by certified mail at 150 Corporate Boulevard, Norfolk, VA 23502. Doc. #25.

2. [22-10336](#)-B-7 **IN RE: SARBJIT SINGH AND LAKHWINDER TIWANA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-17-2022 [\[13\]](#)

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the voluntary petition filing fee of \$338.00 was paid on March 29, 2022. See docket generally. Therefore, the *Order to Show Cause* will be vacated.

3. [22-10251](#)-B-7 **IN RE: ADELA AVALOS**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
2-22-2022 [\[6\]](#)

ADELA AVALOS/MV

NO RULING.

Adela S. Avalos ("Debtor") filed this application for waiver of the chapter 7 filing fee. Doc. #6.

The court set this application for hearing due to lack of information about Debtor's new employment and a discrepancy between the number of dependents listed in the schedules and the application for waiver of the filing fee. Doc. #10.

According to the petition, Debtor receives \$2,581.00 in monthly income (\$30,372.00 annually). Doc. #1, *Sched. I*. This consists of \$2,081.87 in take-home pay from EBS Foods, LLC (Jack in the Box) and a \$500.00

per month contribution from her son. Debtor also indicates recently becoming employed a manager at Panera Bread, which started on February 18, 2022. However, since the petition was filed four days later on February 22, 2022, the income listed from the Panera Bread position is \$0.00. *Id.* In *Schedule J*, Debtor lists two dependents: her son, 28, and her son's partner, 29. *Id.*, *Sched. J*. Meanwhile, Debtor claims to have five dependents in the application to waive the chapter 7 filing fee, for a total household of six. Doc. #6.

Under 28 U.S.C. § 1930(f), the court may waive the filing fee for filing a case under chapter 7 if such individual's income is less than 150% of the income poverty line for a family of applicable size and such individual is unable to pay the fee in installments. So, to qualify for a filing fee waiver, Debtor must show an income below 150% of the federal poverty guidelines based on her family size, as published by the United States Department of Health and Human Services ("HHS"). Those guidelines provide the following income thresholds:

Family Size	Monthly Income	Annual Income
1	\$1,698.75	\$20,385.00
2	\$2,288.75	\$27,465.00
3	\$2,878.75	\$34,545.00
4	\$3,468.75	\$41,625.00
5	\$4,058.75	\$48,705.00
6	\$4,648.75	\$55,785.00

See HHS Poverty Guidelines for 2022.²

Based on Debtor's scheduled monthly income of \$2,581.00, she would need to have at least three or more persons in her family unit, including her, to qualify for a filing fee waiver. However, there are outstanding issues that must be addressed before approval of a fee waiver is warranted.

First, Debtor has not yet disclosed the amount of income she receives from her new position as a manager for Panera Bread, or whether such new position has reduced the number of hours worked and amount of income received from EBS Foods.

Second, Debtor has not established the number of dependents in her family unit. The waiver application says she has five dependents, and the schedules say she has two dependents. The schedules specify that those two dependents are her son, a 28-year-old adult, and her son's partner, 29. But, her son contributes approximately \$500.00 per month for "financial assistance." Doc. #1, *Sched. I*. Do either of these individuals qualify as "dependents" or within the "family size" as prescribed by HHS?

The Annual Update published in connection with the most recent HHS Poverty Guidelines provides:

This notice does not provide definitions of such terms as "income" or "family" as there is considerable variation of these terms among programs that use the poverty guidelines. The legislation or regulations governing each program define these terms and determine how the program applies the poverty guidelines. In cases where legislation or regulations do not establish these definitions, the entity that administers or funds the program is responsible to define such terms as "income" and "family." Therefore, questions such as net or gross income, counted or excluded income, or household size should be directed to the entity that administers or funds the program.

Annual Update of the HHS Poverty Guidelines, 87 Fed. Reg. 3315 (Jan. 18, 2022);³ see also, *In re Bradshaw*, 349 B.R. 511, 513-14 (Bankr. E.D. Tenn. 2006). So, the definition of "family" or "dependent" must be gathered from the Bankruptcy Code. However, 11 U.S.C. § 101 offers no guidance for either of these terms.

The *Guide to Judiciary Policy* promulgated by the Judicial Conference of the United States establishes the following policies with respect to a fee waiver under 28 U.S.C. § 1930(f):

"Family size" may be defined as the debtor(s), the debtor's spouse (unless the spouses are separated and a joint petition is not being filed, and any dependents listed on Schedule I.

Note: The DHHS uses the term "family unit" instead of "family size" but does not publish a standard definition of "family unit."

Guide to Judiciary Policy (emphasis in original).⁴

Next, the *Form Instructions*, which are provided with the *Bankruptcy Forms for Individuals* published on the court's website, use the following definition with respect to the *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B):

Your family includes you, your spouse, and any dependents listed on *Schedule I*. Your family may be different from your household, referenced on *Schedules I* and *J*. Your household may include your unmarried partner and others who live with you and with whom you share income and expenses.

Form Instructions, at 41 (document page 43) (emphasis in original).⁵ Meanwhile, the general definitions to be used in connection with the forms provide:

Dependent – A person who is economically dependent on you regardless of whether the person can be claimed a dependent on your federal tax return. However, *Chapter 7 Means Test Calculation* (Official Form 122A-2) and *Chapter 13 Calculation of Your Disposable Income* (Official Form 122C-2) use the term in a more limited way. See the instructions on those forms.

Form Instructions, Definitions, at 42 (document page 48).⁶

So, for the purposes of qualifying for a fee waiver under 28 U.S.C. § 1390(f), family may consist of the (1) debtor; (2) a spouse, if applicable; and (3) any dependents. A dependent is a person who is “economically dependent” on the debtor. Blood relation does not appear to be necessary.

It is unclear whether Debtor’s son and her son’s partner are economically dependent on Debtor. Debtor’s son provides a \$500.00 monthly contribution to Debtor for financial assistance. This implies that he earns a separate income and may not in fact be dependent on Debtor. No information is provided about Debtor’s son’s partner, so the court is unable to determine whether the partner is economically dependent on Debtor. Additionally, no information is provided about the additional three dependents claimed in Debtor’s fee waiver application (Doc. #6).

This matter will be called as scheduled to inquire about:

1. The amount of Debtor’s current monthly income from all sources of employment;
2. Whether Debtor’s son and the son’s partner are economically dependent on Debtor; and
3. Information about the other three claimed dependents in the fee waiver application, whether those individuals live with Debtor, and whether those individuals are economically dependent on Debtor.

² See <https://www.uscourts.gov/sites/default/files/poverty-guidelines.pdf> (visited Mar. 31, 2021). The court may take judicial notice *sua sponte* of information published on government websites. Fed. R. Evid. 201(c)(1); *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998–99 (9th Cir. 2010).

³ Available at <https://www.federalregister.gov/documents/2022/01/21/2022-01166/annual-update-of-the-hhs-poverty-guidelines> (visited Mar. 31, 2022).

⁴ *Guide to Judiciary Policy*, Vol. 4, Ch. 8, Bankruptcy Case Policies, § 820.20 Judicial Determination of Filing Fee Waiver Applications (Rev. 13, 2021), https://www.uscourts.gov/sites/default/files/vol04_ch08.pdf (visited Mar. 31, 2022).

⁵ *Form Instructions to Bankruptcy Forms for Individuals* (Rev. Apr. 2022), https://www.uscourts.gov/sites/default/files/instructions_individuals.pdf (visited Mar. 31, 2022).

⁶ *Id.*

4. [21-12581](#)-B-7 **IN RE: LARRY SCHALLOCK**
[LKW-2](#)

MOTION FOR AUTHORITY TO WITHDRAW SPOUSAL WAIVER OF RIGHT TO
CLAIM EXEMPTIONS
3-2-2022 [\[34\]](#)

LARRY SCHALLOCK/MV
LEONARD WELSH/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.

Larry Lee Schallock ("Debtor") moves for authority to withdraw a
Spousal Waiver of Right to Claim Exemptions Pursuant to California
Code of Civil Procedure ["C.C.P."] 703.140(a)(2) ("Spousal Waiver").
Doc. #34.

No party in interest timely filed written opposition. This motion will
be GRANTED.

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 chapter 7 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 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.

Debtor filed bankruptcy on November 5, 2021. Doc. #1. Debtor resides
in real property located at 7209 Wilford Court, Bakersfield,
California ("Property"). In the schedules, Debtor did not claim an
interest in Property because he believed that Property was his
spouse's separate property and Debtor did not have any interest in
Property. Doc. #36. Pursuant to this belief, Debtor and his non-filing
spouse, Pamela Mossman-Schallock, executed the Spousal Waiver on
November 16, 2021, which precludes use of the exemption scheme

outlined in C.C.P. §§ 704.010-704.995 and requires Debtor to use exemptions under C.C.P. § 703.140(b) only. Doc. #37, *Ex. B*.

Debtor's attorney, Leonard K. Welsh, determined that he was incorrect and declares that Debtor actually has a community property interest in Property. Doc. #36. Debtor and his wife wish to withdraw the Spousal Waiver so Debtor can amend his exemptions to claim his community property interest in Property as exempt under C.C.P. §§ 704.010, *et seq.*, to protect Property from sale by Trustee. As evidence, Debtor attaches a memorandum entered by the Honorable Fredrick E. Clement in *In re Amado Lara Gomez*, Case No. 14-12107-A-7. Doc. #37, *Ex. C*. This memorandum has been published. See *In re Gomez*, 530 B.R. 751 (Bankr. E.D. Cal. 2014). This is the second attempt at this motion. LKW-1. The first attempt was denied without prejudice because neither Debtor nor Debtor's counsel appeared at the scheduled hearing. Docs. #30; #33.

First, Fed. R. Bankr. P. ("Rule") 1009(a) permits the debtor to amend his or her claim of exemptions in a bankruptcy case "as a matter of course at any time before the case is closed[.]" Though authorized under federal law, the scope and nature of the exemptions is determined by state law. *Gomez*, 530 B.R. at 756.

Second, three elements are required for a valid waiver under C.C.P. § 703.140(a)(2) to be effective: (1) both the debtor and the non-filing spouse waive the right to claim the regular exemptions; (2) each waiver must be effective; and (3) the waiver must arise from a written instrument. *Id.*, citing *In re Geisenheimer*, 530 B.R. 747 (Bankr. E.D. Cal. 2015). Each of these elements have been met. Doc. #37, *Ex. B*.

Third, if a waiver is valid, "absent relief for mistake (of fact or otherwise), inadvertence, surprise, or excusable neglect, or similar showing, a properly executed spousal waiver *may not* be withdrawn." *Gomez*, 530 B.R. at 757 (emphasis added), citing Cal. Civ. Code § 3513; *People v. Ventura Refining Co.*, 204 Cal. 286 (1928); *Faye v. Feldman*, 128 Cal.App.2d 319 (1954); *Cynthia C. v. Super. Ct.*, 72 Cal.App.4th 1196 (1999). However, a valid waiver may still be repudiated where the waiver was given under mistake of fact or waivers that are the product of mistake, inadvertence, surprise, or excusable neglect. *Id.*, citing C.C.P. § 473, incorporated by C.C.P. § 703.030(c); *Verdugo Canon Water Co. v. Verdugo*, 152 Cal. 655 (1908).

Rule 9024 incorporates Federal Rule of Civil Procedure ("Civ. Rule") 60. Civ. Rule 60(b) permits the court to grant relief from a final judgment, order, or proceeding based on mistake, inadvertence, surprise, or excusable neglect.

Courts are permitted to relieve a party or its legal representative from a final judgment, order, or proceeding caused by "inadvertence, mistake, or carelessness, as well as intervening circumstances beyond the party's control." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 388 (1993). An attorney's error may be

grounds for relief under Civ. Rule 60(b). *In re Sheehan*, 253 F.3d 507, 514 (9th Cir. 2001). This determination is "an equitable one taking account of all relevant circumstances surrounding the party's omission." *Pioneer*, 507 U.S. at 395. The factors to consider include:

- (1) Danger of prejudice to the debtors;
- (2) Length of delay and potential impact on judicial proceedings;
- (3) Reason for the delay including whether it was in the movant's control; and
- (4) Whether the party acted in good faith.

1. Danger of prejudice to the debtors: If Debtor is not allowed to withdraw the Spousal Waiver, his community property interest in Property will be subject to sale by Trustee. Rule 1009(a) permits a debtor to amend exemptions as a matter of course and maximize exemptions available to the debtor to help facilitate the debtor's fresh start in the bankruptcy case. *In re Kolich*, 328 F.3d 406, 408 (8th Cir. 2003); *Law v. Siegel*, 751 U.S. 415 (2014). Further, "homesteads are favorites of the law [and] we must give liberal construction to the constitutional and statutory provisions that protect homestead exemptions." *In re Bradley*, 960 F.2d 502, 507 (5th Cir. 1992). In short, Debtor will be prejudiced if withdrawal of the Spousal Waiver is not permitted.

2. Length of delay and impact on judicial proceedings: The Spousal Waiver was signed November 16, 2021. It does not appear to have been filed in this case, other than in the exhibits for this motion and the previous motion. The original motion was filed less than three months after it was executed, and this motion was filed less than four months after it was executed. Administration is ongoing and no motions to sell the Property have been filed. The length of delay is minimal and any impact on proceedings does not appear to be substantial.

3. Reason for delay including whether it was in the movant's control: The reason for the Spousal Waiver and any delays was Debtor's attorney's mistake. Doc. #36. Though within Debtor's control, Debtor's attorney believes that Property was solely separately owned real property that was outside of the bankruptcy estate. But for this mistaken belief, Debtor and his non-filing spouse would not have executed the Spousal Waiver. *Id.*

4. Whether the party acted in good faith: There is nothing in the record suggesting that Debtor has acted in bad faith.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED.

5. [22-10095](#)-B-7 **IN RE: PAULA MARTINEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-21-2022 [\[30\]](#)

\$32.00 FILING FEE PAID 3/21/22

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the amendment fee due in the amount of \$32.00 was paid on March 21, 2022. Therefore, the *Order to Show Cause* will be vacated.

6. [22-10095](#)-B-7 **IN RE: PAULA MARTINEZ**
[JMV-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
2-18-2022 [\[18\]](#)

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue an order.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on February 18, 2022. Docs. ##18-19.

Paula Martinez ("Debtor") timely filed form opposition five times. Docs. #21; ##24-26; #31. Based on handwriting and dates, it appears that Debtor filled out this form separately each time. However, none of these documents include a declaration stating the reasons this case should not be dismissed, or the reasons Debtor failed to appear at the meeting.

Notwithstanding Debtor's failure to include those reasons, the motion will be **CONDITIONALLY DENIED**.

Debtor shall attend the meeting of creditors rescheduled for April 8, 2022 at 10:00 a.m. See Doc. #19. If Debtor fails to do so, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. Trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.