

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, April 21, 2022
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

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. [20-10400](#)-A-13 **IN RE: SALVADOR/GLORIA GONZALES**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-15-2022 [[29](#)]

WELLS FARGO BANK, N.A./MV
BENNY BARCO/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on April 4, 2022. Doc. #35.

2. [18-12801](#)-A-13 **IN RE: JEREMY/SHIRRELL COOK**
[WSL-4](#)

CONTINUED MOTION TO MODIFY PLAN
1-4-2022 [[93](#)]

JEREMY COOK/MV
GREGORY SHANFELD/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.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to confirm the third modified chapter 13 plan. Tr.'s Opp'n, Doc. #101. The debtors' replied and the court continued the hearing on this matter to April 21, 2022, to give Trustee and the debtors an opportunity to resolve Trustee's objection to plan confirmation. Order, Doc. #110. 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 nonresponding parties in interest are entered. This matter will proceed as scheduled.

The court is inclined to DENY the motion to confirm the third modified chapter 13 plan.

Jeremy Daniel Cook and Shirrell Linette Cook (together, "Debtors") filed their third modified chapter 13 plan (the "Plan") on January 4, 2022. Doc. #97. Trustee objects to confirmation of the Plan because (a) the Plan seeks to reduce the dividend to nonpriority unsecured creditors from 5% to 0%; and (b) the Plan seeks to forgive a portion of Debtors' \$8,023.30 delinquency. Doc. #101. By the objection, Trustee requested Debtors provide tax returns, current paystubs with year-to-date earnings, a vehicle purchase agreement, facts surrounding Debtors' 401(k) loan, and facts surrounding voluntary contributions to retirement. Doc. #101.

Per a reply, Debtors stated that a loan was taken against Debtors' 401(k) so that Debtors could avoid dismissal of the chapter 13 case. Doc. #104. Debtors explained that they sought to make voluntary retirement contributions to take advantage of an employer's match program, but that Debtors have ceased voluntary contributions in response to Trustee's opposition. Doc. #104. Debtors further stated that an unexpectedly high electricity bill put them behind in monthly payments. Doc. #95. Debtors are willing to increase the plan payment to \$4,144 beginning February 2022 to maintain a 5% payment to general unsecured creditors. Doc. #104.

At the hearing on February 10, 2022, Trustee requested a continuance to further investigate the documentation submitted by Debtors. Court Audio, Doc. #107. Trustee indicated that Debtors' income had increased over the course of the bankruptcy case and that Trustee might file a separate motion to modify the chapter 13 plan pursuant to 11 U.S.C. § 1329 to increase the dividend to unsecured creditors. After reviewing the information provided by Debtors, Trustee moved to modify Debtors' chapter 13 plan pursuant to the chapter 13 trustee's authority in 11 U.S.C. § 1329. That motion is set for hearing on June 9, 2022. See DCN MHM-3, Doc. #117-122.

It appears that Trustee has rejected Debtors' offer to increase the Plan's proposed dividend to nonpriority unsecured creditors in the order confirming the plan. By Trustee's separate motion, Trustee seeks a dividend of 42.38% to be paid to nonpriority unsecured creditors. See Doc. #117.

Modification of a chapter 13 plan is governed by 11 U.S.C. § 1329. "Section 1329 specifies the way in which confirmed chapter 13 plans may be modified, but it does not state the circumstances in which a modification is proper." Berkley v. Burchard (In re Berkley), 613 B.R. 547, 551 (B.A.P. 9th Cir. 2020). It is left to the discretion of the bankruptcy court to determine whether plan modification is appropriate. Id. However, a debtor's proposed modified plan must still satisfy the requirements of §§ 1322(a), 1322(b), 1323(c), and 1325(a). 11 U.S.C. § 1329(b)(1). Although the disposable income test of § 1325(b)(1)(B) does not apply to plan modification, "[a]n unexpected increase in income is one such change that could warrant a plan modification to increase payments." Id.; Sunahara v. Burchard (In re Sunahara), 326 B.R. 768, 781 (B.A.P. 9th Cir. 2005).

Here, the documentation submitted by Debtors, as well as Debtors' amended Schedule I, shows that Debtors have experienced an increase in income since confirmation of the second modified chapter 13 plan filed on January 3, 2020. Compare Am. Schedule I, Doc. #69 with Am. Schedule I, Doc. #112; see Exhibits, Doc. #115. Debtors have also scheduled an increase in expenses, but the documentation provided by Debtors does not demonstrate that the plan modification reducing the dividend to nonpriority unsecured creditors and forgiving Debtors' delinquency is warranted.

For example, Debtors' most recent schedules assert electricity, heat, and natural gas monthly expenses of \$497.37, but the documentation submitted by

Debtors demonstrates an average monthly expense of approximately \$324. Am. Schedule J, Doc. #112; Exhibits, Doc. #115. In a declaration filed on January 4, 2022, Jeremy Daniel Cook testified that the modification is required in part because Debtors were sidelined by an unexpectedly high electric bill. Cook Decl., Doc. #95. However, prior to the current motion, Debtors had scheduled a monthly electricity, heat, and natural gas expense of approximately \$465, and there is no evidence in the bills submitted by Debtors that the monthly expenses scheduled would have been insufficient to cover Debtors' electricity bills. See Am. Schedule J, Doc. #69.

While an increase in income might warrant a plan modification to increase plan payments, Debtors have not provided any support for the notion that an increase in income properly supports a decrease in plan payments.

Accordingly, Debtors' motion to confirm the third modified chapter 13 plan filed on January 4, 2022 will be DENIED.

3. [22-10413](#)-A-13 **IN RE: JUDY LANGLEY-MILLER**
[DVW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-7-2022 [[16](#)]

U.S. BANK, NATIONAL ASSOCIATION/MV
DIANE WEIFENBACH/ATTY. FOR MV.

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 on April 18, 2022. Doc. #25. The motion will be DENIED AS MOOT.

4. [21-10716](#)-A-13 **IN RE: VINOD SAHNI**
[RSW-1](#)

CONTINUED HEARING RE: MOTION TO CONFIRM PLAN
7-1-2021 [[29](#)]

VINOD SAHNI/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

MOTION TO VALUE COLLATERAL OF REGIONAL ACCEPTANCE CO.
3-16-2022 [\[35\]](#)

CLAUDIA CASTRO/MV
TIMOTHY SPRINGER/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 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(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.

Claudia Patricia Castro ("Debtor"), the debtor in this chapter 13 case, moves the court for an order valuing Debtor's 2017 Kia Sportage ("Vehicle"), which is the collateral of Regional Acceptance Corporation ("Creditor"). Doc. #35.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtor asserts the Vehicle was purchased more than 910 days before the filing of this case. Decl. of Debtor, Doc. #37. Debtor asserts a replacement value of the Vehicle of \$14,109. Debtor's Decl., Doc. #37. By the motion, however, Debtor asks the court for an order valuing the Vehicle at \$14,728. Doc. #35. Debtor states the value of the Vehicle for purposes of 11 U.S.C. §§ 506 and 1322(b) is \$14,728. Doc. #35. Debtor is competent to testify as to the value of

the Vehicle. Creditor filed a proof of claim on January 5, 2022, which asserted a secured claim of \$33,849.14. Claim 4. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$14,728. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

6. [22-10019](#)-A-13 **IN RE: MARIA ECHEVERRIA**
[MHM-2](#)

MOTION TO DISMISS CASE
3-22-2022 [\[24\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on April 14, 2022. Doc. #34.

7. [22-10019](#)-A-13 **IN RE: MARIA ECHEVERRIA**
[MHM-3](#)

MOTION TO DISMISS CASE
3-23-2022 [\[28\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because debtor failed to appear at the continued § 341 meeting of creditors. Doc. #28. The debtor failed to appear at the continued meeting of creditors held March 22, 2022. Doc. #30. The debtor did not oppose the chapter 13 trustee's motion.

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 appear at the meeting of creditors.

A review of the debtor's schedules shows that the debtor's significant assets, real property and a vehicle, are fully exempt. Schedules A/B & C, Doc. #9. Because there is no equity to be realized for the benefit of the estate, the court finds that dismissal, rather than conversion, is in the best interests of creditors and the estate.

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

8. [21-10840](#)-A-13 **IN RE: HECTOR/DESIREE FLORES**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
2-18-2022 [[39](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

MOTION TO MODIFY PLAN
3-7-2022 [43]

HECTOR FLORES/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). On April 6, 2022, the chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to confirm the second modified chapter 13 plan. Doc. #56. The debtors have not replied. The failure of other 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 nonresponding parties in interest are entered. This matter will proceed as scheduled.

Hector Manuel Flores and Desiree Michele Flores (together, "Debtors") filed their second modified chapter 13 plan ("Plan") on March 7, 2022. Doc. #45. The Plan reduces the dividend to nonpriority unsecured creditors to 0%. Plan, Doc. #45; Decl. of Hector Flores, Doc. #48. Hector Flores has been on disability and is being certified to return to work, but his employer no longer has a position to which he can return. Flores Decl., Doc. #48. Debtors' amended Schedules I and J show reduced income and reduced expenses. Am. Schedules I & J, Doc. #50.

Trustee objections to confirmation of the Plan for two primary reasons: the Plan fails to comply with applicable provisions of the Bankruptcy Code required by 11 U.S.C. § 1325(a)(1), and Debtors will not be able to comply with the Plan as required by § 1325(a)(6). Doc. #56.

Trustee states that the Plan fails to comply with applicable provisions of the Bankruptcy Code because Debtors incorrectly state that there is no liquidation requirement. Doc. #56; see Flores Decl., Doc. #48. However, there is a liquidation requirement of \$2,848.79. See Order, Doc. #15. Trustee states that the liquidation requirement can be satisfied by the claims entitled to priority, and it is unclear if Debtors' misstatement highlighted by Trustee is a basis to deny Plan confirmation.

Regarding Debtors' inability to comply with the Plan, Trustee states that the Plan does not fund in the months remaining. Doc. #56. The Plan reduces dividends to Class 1 and Class 2 creditors and will fund in 64.17 months. There are approximately 49 months remaining under the Plan. Doc. #56. Section 2.03 of the Plan states that "in no event shall monthly payments continue for more than 60 months." Plan, Doc. #45. As is, Debtors will not be able to comply with the Plan and the Plan cannot be confirmed.

Trustee also points out that the new decreased dividends for Class 1 and Class 2 claims are not accompanied by a specific start date, resulting in the lowered dividend reverting to month one. Doc. #56. The claims will thus be overpaid. Id. However, Trustee states that these corrections can be included in the order confirming the Plan. Id.

Unless Trustee states otherwise, it appears that the objections can be cured in the order confirming the Plan so long as Debtors are willing to address Trustee's concerns.

Accordingly, the court is inclined to GRANT the motion to confirm the Plan subject to the additional provisions of the order confirming the Plan. The court will issue an order if a further hearing is necessary.

10. [17-13446](#)-A-13 **IN RE: LEONEL TERA**
[MHM-3](#)

MOTION TO DISMISS CASE
3-11-2022 [[75](#)]

MICHAEL MEYER/MV
PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

The chapter 13 trustee moved to dismiss the case because the debtor is delinquent in the amount of \$5,170 through February 2022. Doc. #75. An additional monthly payment of \$2,170 came due on March 25, 2022, after the filing of the trustee's motion to dismiss but prior to the hearing date. In the motion, the trustee stated that if the debtor pays the delinquency of \$5,170, in addition to monthly plan payments that come due while the motion to dismiss is pending, the trustee will withdraw the motion to dismiss. Doc. #75.

On April 7, 2022, the debtor filed a written response stating that the debtor "has begun the payments necessary to become current on all plan payments up through an including the March 25, 2022 payment." Doc. #79. The debtor testifies that he paid \$2,170 on March 28, 2022; \$2,170 on April 1, 2022; and \$3,000 on April 6, 2022 through TFSBillPay and should be current on his plan payments prior to the hearing date. Doc. #80.

As of April 18, 2022, the motion to dismiss has not been withdrawn.

At the hearing, the parties should be prepared to address the dispute regarding delinquent plan payments.

MOTION TO DISMISS CASE
3-11-2022 [\[56\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case for unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and for material default by the debtors with respect to a term of the confirmed plan (11 U.S.C. § 1037(c)(6)) because the debtors have failed to respond to Trustee's request for additional information regarding the annual review provisions of the confirmed plan. Doc. #56. The debtors did not oppose the chapter 13 trustee's motion.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors and for material default of a term of a confirmed plan because the debtors failed to respond to Trustee's request for additional information. The debtors' confirmed plan requires the debtors provide Trustee with copies of tax returns and other financial information regarding the debtors' financial affairs. Plan ¶ 6.02, Doc. #31. The order confirming the plan states that the debtors' bankruptcy case is subject to an annual review by Trustee commencing February 1, 2022 and requires the debtors to submit information pertaining to the debtors' financial affairs. Order, Doc. #54. Trustee testifies that the debtors have not provided the required information. Decl. of Kelsey A. Seib, Doc. #58.

A review of the debtors' schedules shows that the debtors' significant assets, vehicles and other personal property, are over-encumbered. Schedules A/B & D, Doc. #7. Because there is no equity to be realized for the benefit of the estate, the court finds that dismissal, rather than conversion, is in the best interests of creditors and the estate.

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

12. [21-12272](#)-A-13 **IN RE: AMANDA MANUEL**
[JNV-3](#)

MOTION TO CONFIRM PLAN
3-10-2022 [[35](#)]

AMANDA MANUEL/MV
JASON VOGELPOHL/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 26, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the second amended chapter 13 plan. Tr.'s Opp'n, Doc. #43. 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 May 5, 2022. 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 May 12, 2022.

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 May 12, 2022. 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.

MOTION TO INCUR DEBT
3-22-2022 [[34](#)]

JOHN JACKSON/MV
JEFFREY ROWE/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 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(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.

John Daniel Jackson and Angela Latrice Jackson (together, "Debtors"), the chapter 13 debtors in this case, move the court for an order authorizing Debtors to incur new debt. Doc. #34. Joint debtor John Daniel Jackson received a pay increase in July of 2021, from \$12,500 per month to \$15,833.33 per month. Decl. of John Daniel Jackson, Doc. #36. Debtors currently rent and wish to buy a single-family home. Id. Debtors have been pre-approved for an FHA home loan in the amount of \$436,000, with the anticipated interest rate on a 30-year fixed rate mortgage between 4.65% to 6.50%. Id. The estimated monthly payment, including real estate property taxes and insurance, would be between \$3,109 and \$3,587. Id. Debtors' confirmed chapter 13 plan calls for monthly plan payments of \$2,111 and pays 100% to nonpriority unsecured creditors. Plan, Doc. #5; Order, Doc. #22.

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

This motion will be GRANTED. This motion was properly served and noticed, and no written opposition was filed. There is no indication that Debtors are not current on their chapter 13 plan payments or that the chapter 13 plan is in default. Debtors filed amended Schedules I and J that demonstrate an ability to pay future plan payments, projected living and business expenses, and the new debt. Am. Schedules I & J, Doc. #32. The new debt is a single loan incurred to purchase real property that is reasonably necessary for the maintenance or

support of Debtors. The only security for the new debt will be the real property to be purchased by Debtors.

Accordingly, this motion is GRANTED. Debtors are authorized, but not required, to incur debt in a manner consistent with the motion.

1. [19-12047](#)-A-7 **IN RE: ROBERT FLETCHER**
[19-1097](#) [CAE-1](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
9-30-2019 [\[8\]](#)

FLETCHER V. FLETCHER ET AL
DAVID JENKINS/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 28, 2022, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the plaintiff's status report (Doc. #158), the pre-trial conference will be continued to July 28, 2022, at 11:00 a.m.

If the adversary proceeding is not dismissed prior to July 21, 2022, the parties shall file either joint or unilateral status report(s) not later than July 21, 2022.

2. [20-11147](#)-A-7 **IN RE: MARTIN LEON-MORALES AND MA ELENA MALDONADO-RAMIREZ**
[20-1040](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING FOR
FAILURE TO PROSECUTE
3-10-2022 [\[38\]](#)

DE CASTAING ET AL V. MALDONADO-RAMIREZ ET AL
RESPONSIVE PLEADING

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

On March 10, 2022, this court issued an order to show cause ("OSC") why this adversary proceeding should not be dismissed for lack of prosecution for the failure of the plaintiffs or their prospective new counsel to appear at the pre-trial conference held on March 10, 2022. Doc. #38.

On April 20, 2022, counsel for the plaintiffs filed a declaration explaining that the date of the March 10, 2022 pre-trial conference was not calendared by counsel's office staff and, as a result, prospective new counsel for the plaintiffs did not appear at the March 10, 2022 pre-trial conference. Doc. #57.

Based on the explanation provided by the plaintiffs' prospective new counsel, the court finds that the failure of the plaintiffs or their prospective new counsel to appear at the March 10, 2022 to be inadvertent, and the court will

not dismiss the adversary proceeding for lack of prosecution as set forth in the OSC. The OSC is vacated.

3. [20-11147](#)-A-7 **IN RE: MARTIN LEON-MORALES AND MA ELENA MALDONADO-RAMIREZ**
[20-1040](#) [JRL-1](#)

MOTION TO DISMISS CASE AND/OR MOTION FOR SANCTIONS
3-17-2022 [\[41\]](#)

DE CASTAING ET AL V. MALDONADO-RAMIREZ ET AL
JERRY LOWE/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 12, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The hearing on this matter will be continued to May 12, 2022 to be heard with the plaintiffs' motion to reopen discovery and continue the discovery cut-off date. See DCN HDN-2, Doc. ##45-51.

4. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#)

ORDER TO SHOW CAUSE REGARDING STRIKING THE ANSWER FILED BY GLVM, A
CALIFORNIA CORPORATION
3-17-2022 [\[330\]](#)

NICOLE V. T2M INVESTMENTS, LLC

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 answer filed by GLVM, A California Corporation, which was the subject of the order to show cause, was withdrawn on April 11, 2022. Doc. #333.

CONTINUED ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING
2-1-2022 [[31](#)]

NICOLE V. PEEK FUNERAL HOME ET AL
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This adversary proceeding will be dismissed for lack of
subject matter jurisdiction.

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

On February 1, 2022, the court issued an Order to Show Cause regarding dismissal of this adversary proceeding for lack of subject matter jurisdiction (the "OSC"). Order, Adv. Proc. Doc. #31. The court ordered the plaintiff and chapter 13 debtor Sylvia Nicole a/k/a Van Kim Lai ("Plaintiff") to file a written response to the OSC no later than March 1, 2022, and set a hearing for March 10, 2022 at 11:00 a.m. Adv. Proc. Doc. #31. On February 25, 2022, the court granted Plaintiff's request for an extension of time to respond to the OSC, giving Plaintiff until March 31, 2022 to file a written response to the OSC. Order, Adv. Proc. Doc. #40. The court continued the hearing to April 21, 2022 at 11:00 a.m. Adv. Proc. Doc. #40. Plaintiff filed a written response on March 31, 2022. Adv. Proc. Doc. #103. This matter will proceed as scheduled.

On January 10, 2022, Plaintiff commenced this adversary proceeding ("Adversary Proceeding") in pro se by filing a complaint, with an amended complaint filed on January 24, 2022. Adv. Proc. Doc. #1; Adv. Proc. Doc. #29. In the amended complaint, Plaintiff asserts causes of action for fraud, elder abuse, negligence, a request to quiet title, and civil rights violations against Peek Funeral Home, Khiem Lai, Khanh Lai, Kim Lan Tran, Chau Lai, Tracy Le, Regina Nguyen, the California Superior Court of Orange County ("State Court"), and Does 1 through 100 (collectively, "Defendants"). Adv. Proc. Doc. #29.

The court issued the OSC because it appears, after careful consideration of the original complaint and amended complaint, that the bankruptcy court lacks subject matter jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and relevant Ninth Circuit authority. OSC, Adv. Proc. Doc. #31. Consequently, this adversary proceeding must be dismissed pursuant to Federal Rule of Civil Procedure 12(h)(3), incorporated into this adversary proceeding by Federal Rule of Bankruptcy Procedure 7012(b).

In the amended complaint, Plaintiff alleges that at some unspecified time the residential real property located at 914 N. Toddy Street, Santa Ana, CA 92703 ("Toddy") was sold to an unidentified third party by co-defendant Chau Lai who held title to Toddy. The sale of Toddy by Chau Lai was allegedly part of a scheme to defraud Plaintiff and others and resulted in Plaintiff, Plaintiff's brother, and Plaintiff's father becoming homeless. Plaintiff contends that co-defendants Khanh Lai and Regina Nguyen told Plaintiff that they would keep Toddy for Plaintiff, but they did not. Plaintiff further alleges that she is entitled to an interest in the residential real property located at 4418 Oakfield Ave., Santa Ana, CA 92703 ("Oakfield") because Oakfield was owned by Plaintiff's mother, who has since passed away, and/or because the mortgage

for Oakfield was paid with rental income generated by Toddy and the commingling of funds entitles Plaintiff to an interest in Oakfield. Plaintiff alleges that Defendants' fraudulent misrepresentations and other wrongful conduct deprived Plaintiff of her property (Toddy and Oakfield) and related income.

Plaintiff also alleges that her father Keim Dinh Lai recently passed away due to the Defendants' fraud and negligence, and that Plaintiff's mother Lanh Nguyen died because of lethal chemical injections administered by Defendants. Plaintiff contends that Defendants failed to provide financial assistance to Plaintiff's father, resulting in his recent death. Plaintiff alleges that Peek Funeral Home participated in this fraud and negligence by failing to assist Plaintiff in reporting elder abuse and failing to comply with Plaintiff's request for an autopsy.

Finally, Plaintiff alleges that the State Court discriminated against Plaintiff as a pro se litigant, denied Plaintiff her constitutional rights, and unlawfully declared Plaintiff a vexatious litigant. Plaintiff asks the bankruptcy court to grant title and ownership of Toddy to Plaintiff, grant Plaintiff an ownership interest or a monetary award compensating Plaintiff for her lost interest in Oakfield, void the vexatious litigant order against Plaintiff entered in the State Court, award monetary damages to Plaintiff for Defendants' negligence and abusive conduct, and grant Plaintiff other unspecified injunctive and declaratory relief against the State Court for civil rights violations.

In Plaintiff's bankruptcy case, Case No. 21-10679-A-13 commenced on January 5, 2021, the hearing on Plaintiff's motion to confirm her chapter 13 plan was held on November 18, 2021, and the court granted Plaintiff's motion. Civil Minutes, Bankr. Doc. #282. After some delay getting Plaintiff to sign the order, the order confirming the plan was entered on January 24, 2022. Bankr. Doc. #317. Prior to filing the current chapter 13 case, Plaintiff was granted a chapter 7 discharge on April 17, 2019, and Plaintiff is ineligible for a discharge in her pending bankruptcy case. Bankr. Doc. #45; see 11 U.S.C. § 1328(f)(1).

Plaintiff's chapter 13 plan revests property of the estate in Plaintiff upon confirmation of the plan. Bankr. Doc. #218. The only allowed claim in Plaintiff's bankruptcy case is held by the California Franchise Tax Board, and that claim is to be paid in full through the confirmed plan. Bankr. Doc. #218. Plaintiff's chapter 13 plan provides for monthly payments to a single secured creditor for Merced County property taxes. Bankr. Doc. #218. There are no nonstandard provisions. The plan will pay 100% to nonpriority unsecured creditors with monthly plan payments of \$188 for 60 months. Bankr. Doc. #218.

On February 14, 2022, the chapter 13 trustee filed and served a Notice of Filed Claims in the bankruptcy case. Bankr. Doc. ##334, 335. According to the Notice of Filed Claims, Plaintiff's chapter 13 plan pays 100% of every filed claim and 100% of every unsecured claim. The Notice of Filed Claims also states that the deadlines for creditors and governmental units to file proofs of claim passed in 2021. Bankr. Doc. #334. The deadline for Plaintiff to file claims or to object to claims was April 15, 2022. Bankr. Doc. #334. No new proofs of claim or objections to filed proofs of claim were filed timely by Plaintiff.

While the court is aware of its obligation to ensure that the claims of a pro se litigant are given fair and meaningful consideration, the court also has an obligation to address whether it has subject matter jurisdiction over an adversary proceeding filed in this court. Fed. R. Civ. P. 12(h)(3); Crosson v. A.A. Fire Safety (In re Crosson), 333 B.R. 794, 798 (Bankr. N.D. Ill. 2005). In any event, "[t]he burden of establishing subject matter jurisdiction rests on the party asserting that the court has jurisdiction." Wilshire Courtyard v.

Section 1334(b) of title 28 states that the district courts, and by reference the bankruptcy courts, "shall have original but not exclusive jurisdiction over all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b); 28 U.S.C. § 157(a). In other words, a bankruptcy court must have "arising under", "arising in", or "related to" jurisdiction. Wilshire Courtyard, 729 F.3d at 1285-93.

"Proceedings 'arising under' title 11 involve causes of action created or determined by a statutory provision of that title." Wilshire Courtyard, 729 F.3d at 1285 (citations omitted). Neither Plaintiff's original complaint nor amended complaint establish "arising under" jurisdiction because Plaintiff does not assert a cause of action created by the Bankruptcy Code. While Plaintiff's original complaint and amended complaint both assert that this Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(F), there are no factual allegations or causes of action set forth in either complaint seeking to determine, avoid, or recover preferences. Section 547 of the Bankruptcy Code allows the trustee to avoid certain transfers of an interest of the debtor in property. 11 U.S.C. § 547(b). Although a chapter 13 debtor may have avoiding powers concurrent with the chapter 13 trustee, see Houston v. Eiler (In re Cohen), 305 B.R. 886, 898-99 (B.A.P. 9th Cir. 2004), neither Plaintiff's original complaint nor amended complaint allege any facts establishing a cause of action under § 547 of the Bankruptcy Code, both merely cite to 28 U.S.C. § 157(b)(2)(F) as the basis for this court's jurisdiction. See Food Catering & Hous., Inc. v. Chemcarb, Inc. (In re Food Catering & Hous., Inc.), 971 F.2d 396, 397 (9th Cir. 1992) (setting forth elements of a cause of action under 11 U.S.C. § 547(b)). Accordingly, neither Plaintiff's original complaint nor amended complaint establish "arising under" jurisdiction.

"Similarly, proceedings 'arising in' title 11 are not those created or determined by the bankruptcy code, but which would have no existence outside of a bankruptcy case." Wilshire Courtyard, 729 F.3d at 1285 (citations omitted). Plaintiff does not establish "arising in" jurisdiction because the allegations in the original and amended complaint are wholly independent from the bankruptcy case. As stated in Wilshire Courtyard, "this case does not present an issue unique to bankruptcy proceedings 'that has no independent existence outside of bankruptcy and could not be brought in another forum.'" Wilshire Courtyard, 729 F.3d at 1287 (quoting Battle Ground Plaza, LLC v. Ray (In re Ray), 624 F.3d 1124, 1133 (9th Cir. 2010)).

Regarding "related to" jurisdiction, the court acknowledges that at the time Plaintiff filed the original complaint, the order confirming the chapter 13 plan had not been entered by the bankruptcy court even though the confirmation hearing confirming the chapter 13 plan was held in November 2021. "Subject matter jurisdiction should be determined as of the date that the complaint" was filed. Dale Howard Fietz v. Great Western Savings (In re Fietz), 852 F.2d 455, 457 n.1 (9th Cir. 1988). Taking Plaintiff's original complaint as a proceeding arising after Plaintiff's chapter 13 plan was confirmed orally but before entry of a written order, Plaintiff does not satisfy "related to" jurisdiction.

The bankruptcy court has "related to" jurisdiction if the outcome of the proceeding conceivably could have any effect on the estate being administered in bankruptcy. Fietz, 852 F.2d at 457; Montana v. Goldin (In re Pegasus Gold Corp.), 394 F.3d 1189, 1193 (9th Cir. 2005). "An action is related to the bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate."

Fietz, 852 F.2d at 457 (quoting Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984); see also Celotex Corp. v. Edwards, 514 U.S. 300, 308 n.6 (1995) (discussing circuit decisions that "make clear that bankruptcy courts have no jurisdiction over proceedings that have no effect on the estate of the debtor.").

Plaintiff states this court has subject matter jurisdiction over the Adversary Proceeding, although Plaintiff's response is devoid of any legal argument or citation. Adv. Proc. Doc. #103. The court will address and dispose of Plaintiff's arguments in the same manner in which those were presented in Plaintiff's response to the OSC.

"(a) The real estate properties described in the adversary proceeding ("Real Property Estate") [Toddy and Oakfield] are part of the bankruptcy's estate." Adv. Proc. Doc. #103. This is a legal conclusion and not supported by citation to any law or relevant facts. On April 11, 2022, Plaintiff filed a partial amended Schedule A/B adding Oakfield to Schedule A/B. Bankr. Doc. #351. Since the amendment, Plaintiff's Schedule A/B lists Toddy and Oakfield. Id. However, the facts alleged by Plaintiff make it clear that Plaintiff did not have legal title or possession of either Toddy or Oakfield at the time the Adversary Proceeding was filed, or even at the time the bankruptcy petition was filed. Plaintiff never scheduled any interest in property due from someone who has died, claims against Defendants, or other contingent or unliquidated claims of every nature. Schedule A/B, Bankr. Doc. #18. Further, Plaintiff's confirmed chapter 13 plan revested estate property in Plaintiff upon confirmation. Even if Toddy and Oakfield were property of the estate at the time the Adversary Proceeding was filed, for the reasons discussed more fully below, that does not necessarily grant the bankruptcy court subject matter jurisdiction in this case. Fietz, 852 F.2d at 458.

"(b) The defendants in the adversary proceeding ("Defendants") are named in the creditor list." Adv. Proc. Doc. #103. Although not supported by any legal argument, it appears that Plaintiff is suggesting that the appearance of Defendants on Plaintiff's amended creditor list filed April 11, 2022, two months after the court issued the OSC, means that the bankruptcy court has jurisdiction over this Adversary Proceeding. However, the test for "related to" subject matter jurisdiction is whether the outcome of the Adversary Proceeding could conceivably affect the administration of the bankruptcy case. The appearance of a defendant on a creditor list does not grant subject matter jurisdiction, the court is still bound by statutory and constitutional limits. Moreover, subject matter jurisdiction is determined as of the date that the complaint was filed. Fietz, 852 F.2d at 457 n.1. Here, Defendants were not named on Plaintiff's creditor list at the time the original complaint was filed. Bankr. Doc. #132.

"(c) Defendants have interest and are in control of the Real Property Estate [Toddy and Oakfield]." Adv. Proc. Doc. #103. This statement must be taken together with paragraph (d), which reads: "As a result, plaintiff and family are homeless." Plaintiff contends that Defendants' conduct has rendered Plaintiff and her family homeless, but that does not demonstrate how the bankruptcy court has jurisdiction over this Adversary Proceeding. Assuming Plaintiff does have a valid state-law claim in tort for Defendants' conduct that caused Plaintiff's homelessness, a resolution of that dispute would have no conceivable impact on Plaintiff's bankruptcy. If Plaintiff succeeded on the merits of her asserted causes of action and either won a money judgment or gained clear title to Toddy and/or Oakfield, such an award would not increase the pool of funds to creditors who are already being paid in full on all allowed claims through monthly plan payments. If Plaintiff did not win on the merits of her asserted causes of action, she would be in the same position as

when she commenced the Adversary Proceeding, and her bankruptcy case and confirmed chapter 13 plan would remain unchanged.

"(e) This court and the trustee must determine plaintiff's rights and all creditors' rights with respect to the Real Property Estate [Toddy and Oakfield] and reverse the title and ownership of the Real Property Estate [Toddy and Oakfield] accordingly to the rightful owner(s) and/or sell the estate off to pay all legal claims." Adv. Proc. Doc. #103. Whether the court must determine Plaintiff's and creditors' rights is exactly what the court is trying to determine by issuing the OSC, and it does not appear that the court is so obligated. Plaintiff's request to reverse title and ownership is a state law claim that has no conceivable impact on the administration of Plaintiff's bankruptcy case. None of the Defendants have allowed claims in Plaintiff's bankruptcy case, and none of the Defendants are entitled to any distribution under Plaintiff's confirmed plan. Neither are any of the Defendants otherwise provided for in the Plaintiff's confirmed plan. Also, Plaintiff's confirmed plan will pay all allowed claims in full through proposed payments. No real property needs to be sold to pay any claims.

"(f) Also, even though the chapter 13 plan was confirmed by the court, creditor T2M Investments, LLC ("T2M") rented out plaintiff's Los Banos property listed in the chapter 13 plan to a third party and refused to return the property to plaintiff." Adv. Proc. Doc. #103. Neither T2M nor the Los Banos property are involved in this Adversary Proceeding. Therefore, the dispute Plaintiff has with T2M has no bearing on the court's subject matter jurisdiction over this Adversary Proceeding.

"(g) Furthermore, because creditor T2M refused to remove the mortgage lien on the Los Banos property, plaintiff has to come up with \$185,000 to pay off T2M to avoid future property foreclosure." Adv. Proc. Doc. #103. Again, the dispute between T2M and Plaintiff is not related to this Adversary Proceeding and has no bearing on the court's subject matter jurisdiction in this Adversary Proceeding. To the extent that Plaintiff believes the outcome of this Adversary Proceeding will provide Plaintiff with funds to pay a creditor of her estate, T2M does not have an allowed claim and is not provided for in Plaintiff's confirmed plan. The resolution of this Adversary Proceeding has no conceivable impact on the administration of Plaintiff's bankruptcy estate because the liquidation of Toddy or Oakfield is not required to pay any allowed claim, will not prevent or enable Plaintiff to perform any of the terms of her confirmed chapter 13 plan, and will not result in a greater payout to nonpriority unsecured claims. Also, Plaintiff will not receive a discharge, so no creditors are adversely impacted.

"(h) Thus, plaintiff must prevail the adverse proceeding in order to have a place to live and to pay off all creditors' claims." Adv. Proc. Doc. #103. As stated above, the resolution of this Adversary Proceeding has no conceivable impact on Plaintiff's bankruptcy case or Plaintiff's ability to perform the terms of her confirmed chapter 13 plan. Plaintiff's housing status also is not a consideration that could grant the bankruptcy court subject matter jurisdiction over this Adversary Proceeding.

"(i) With respect to the state court: Both the Orange County Superior Court and the Merced County Superior Court have already failed to resolve the issues described in the adversary proceeding and have caused plaintiff more damages resulting in plaintiff filing bankruptcy over and over again for relief." Adv. Proc. Doc. #103. This is simply a restatement of Plaintiff's allegations against the state courts and provides no basis for this court exercising subject matter jurisdiction. This court has no jurisdiction to review the judgments of the state courts that Plaintiff alleges have caused her damages.

The resolution of these claims will have no conceivable impact on Plaintiff's bankruptcy case.

Plaintiff concludes her response to the court by saying: "For the reasons above, the adversary proceeding must not be dismissed, and plaintiff must be allowed to amend the complaint to include new bankruptcy related causes of action for claims being filed by creditors and to enable the trustee to manage creditors' claims effectively." Adv. Proc. Doc. #103. Here, the chapter 13 trustee does not require this Adversary Proceeding to manage any creditor's claims. The chapter 13 trustee has his own independent authority to take actions necessary to manage claims if he so chooses. Similarly, this Adversary Proceeding is not necessary for Plaintiff to deal with "claims being filed by creditors" since none of the Defendants have filed proofs of claim in Plaintiff's pending bankruptcy case.

Regarding amendment, a party may only amend a pleading once as a matter of course. Fed. R. Civ. P. 15(a)(1). After amending a pleading once as a matter of course, the party may only amend after obtaining leave of the court or the consent of the opposing parties. Fed. R. Civ. P. 15(a)(2); Eminence Cap., LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003). Leave to amend should be freely granted, unless the court "determines that the pleading could not possibly be cured by the allegation of other facts." Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). In this case, Plaintiff has amended the complaint once as a matter of course and now requires leave of court or must obtain the consent of the opposing parties. The court will not grant leave to amend because amendment would be futile. See Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983).

There are no set of facts that Plaintiff could include by way of amendment that would grant the court subject matter jurisdiction to hear causes of action asserted in Plaintiff's complaint. The issue is not whether Plaintiff states a plausible claim for relief, but whether the bankruptcy court has subject matter jurisdiction to grant the relief requested. The court already granted Plaintiff an additional 30 days to respond to the OSC, yet Plaintiff explains only that she seeks "to include new bankruptcy related causes of action for claims being filed by creditors[.]" Adv. Proc. Doc. #103. Plaintiff has not established the court's subject matter jurisdiction over the causes of action already asserted. There is no reason to think that allowing Plaintiff to add more causes of action "related to" the bankruptcy case will establish this court's subject matter jurisdiction over this Adversary Proceeding. Also, Plaintiff states that the proposed amended causes of action will somehow correlate to claims being filed by creditors, yet none of the Defendants have filed proofs of claims and the claims bar date has passed. Finally, LBR 7015-1 requires the party seeking to amend a pleading before trial to attach the proposed pleading with the amendments and identify to the court each proposed addition or deletion. Plaintiff has submitted no such document. Because Plaintiff has not established subject matter jurisdiction in this Adversary Proceeding, and because the proposed amendment to include additional "related to" causes of action could not create subject matter jurisdiction, amendment will be futile.

The outcome of Plaintiff's Adversary Proceeding at the time it was filed would not have had any effect on the estate being administered in bankruptcy. Plaintiff's recovery on the Adversary Proceeding would not have enlarged Plaintiff's bankruptcy estate for the benefit of creditors; Plaintiff is capable of paying all allowed secured and unsecured claims in full without succeeding on the merits of her complaint. The outcome of this Adversary Proceeding will not alter Plaintiff's rights, liabilities, etc., because Plaintiff, if she loses on the merits of the Adversary Proceeding, would be in the same position as when she commenced the action. Plaintiff already has

sufficient income to pay holders of allowed claims, and none of the potential recovery from the causes of action asserted in the Adversary Proceeding would be held for the benefit of creditors or the estate.

Neither the original nor amended complaint ask the bankruptcy court to interpret or enforce any bankruptcy court orders or resolve any issues arising from the Bankruptcy Code. The causes of action and supporting allegations could exist entirely outside of bankruptcy such that Plaintiff's status as a bankruptcy debtor has no relationship to the relief sought in either of the complaints. "Debtors are not entitled to have the bankruptcy court hear complaints simply because they are disgruntled with the process in the state court." Crosson, 333 B.R. at 801. In the amended complaint, Plaintiff asks this court to vacate an order of the State Court and try Plaintiff's claims under 42 U.S.C. § 1983 but does not demonstrate how those claims are in any way connected with Plaintiff's bankruptcy case. Plaintiff already has been told by this court in a separate adversary proceeding that the bankruptcy court is not the appropriate forum to attack prior state court orders or to bring claims arising from alleged misconduct in state court litigation. See Adv. Proc. No. 21-1015, Civil Minutes, Doc. #161.

In sum, the entirety of the allegations set forth in the original complaint and amended complaint could be raised in a separate forum and resolved without any reference to or knowledge of the Bankruptcy Code. There would be no conceivable effect to the administration of the bankruptcy estate. Accordingly, there is no "related to" jurisdiction under the Ninth Circuit authority of Fietz, and this court lacks subject matter jurisdiction to hear this Adversary Proceeding.

This Adversary Proceeding will be DISMISSED for lack of subject matter jurisdiction.

6. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[22-1003](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
1-24-2022 [[29](#)]

NICOLE V. PEEK FUNERAL HOME ET AL
RESPONSIVE PLEADING

NO RULING.