

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, April 27, 2022
Place: Department B – Courtroom #13
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [19-13321](#)-B-13 **IN RE: NICOLE GUERRA**
[JRL-1](#)

MOTION TO RECONSIDER DISMISSAL OF CASE
3-29-2022 [[35](#)]

NICOLE GUERRA/MV
JERRY LOWE/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

Debtor Nicole Ranae Guerra withdrew this motion on April 22, 2022.
Doc. #42. Accordingly, the motion is dismissed, and the hearing will
be DROPPED FROM CALENDAR.

2. [21-12385](#)-B-13 **IN RE: IRENE/TINISHA PEREZ**
[MHM-1](#)

MOTION TO DISMISS CASE
3-28-2022 [[47](#)]

MICHAEL MEYER/MV
JAMES MILLER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtors that is prejudicial to creditors and because debtors have failed to make all payments due under the plan (11 U.S.C. § 1307(c)(4)). Doc #47. Debtors 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 debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and debtors have failed to make all payments due under the plan (11 U.S.C. § 1307(c)(4)). Debtors are delinquent in the amount of \$3,620.00. Doc. #49. Before this hearing, another payment of \$1,810.00 will also come due. *Id.* Debtors did not oppose.

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

In addition, the trustee has reviewed the schedules and determined that the debtors' assets are over encumbered and are of no benefit to the estate. Doc. #47.

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

11:00 AM

1. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[22-1007](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
3-1-2022 [[1](#)]

SLOAN V. SLOAN
PETER SAUER/ATTY. FOR PL.

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

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

ORDER: The court will issue an order.

Debtor-in-possession Stephen William Sloan ("Plaintiff") filed this adversary complaint on March 1, 2022. Doc. #1. The *Summons and Notice of Status Conference in an Adversary Proceeding* was issued the next day, March 2, 2022. Doc. #3. On March 4, 2022, Plaintiff served the summons with notice of the status conference and a copy of the complaint on William Brett Sloan as Trustee of the Brett Sloan Irrevocable Trust, and of the Grace Sloan Irrevocable Trust, both dated February 4, 2020 ("Defendant"). Doc. #6. Accordingly, the deadline for Defendant to file and serve an answer pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7012(a) is 30 days after the issuance of the summons, which is April 1, 2022.

On April 13, 2022, the parties jointly stipulated pursuant to Local Rule of Practice ("LBR") 7012-1 to extend the deadline 30 days from the original time required to respond to the complaint, file an answer, or otherwise plead. Doc. #8. The court notes that the stipulation erroneously provides that Defendant's deadline to file an answer or otherwise plead would have been April 4, 2022, rather than April 1, 2022. *Id.*, ¶ 7. Therefore, the extended deadline for Defendant to file an answer or other responsive pleading is Sunday, May 1, 2022, which is further extended to Monday, May 2, 2022 pursuant to Rule 9006(a)(1)(C).

This status conference will be CONTINUED to May 11, 2022 at 11:00 a.m. to be heard after the deadline for Defendant to file an answer or other responsive pleading. The parties are invited, but not required, to file joint or unilateral status conference statements not later than seven days before the continued status conference.