

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, April 28, 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.

1. [20-13003](#)-A-13 **IN RE: JEANNIE ROONEY**
[TCS-1](#)

MOTION FOR COMPENSATION FOR TIMOTHY C. SPRINGER, DEBTORS ATTORNEY(S)
3-21-2022 [\[20\]](#)

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.

The Law Offices of Timothy C. Springer, Nancy D. Klepaq ("Movant"), counsel for Jeannie Marie Rooney ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation and reimbursement for expenses in the amount of \$5,315 for services rendered from March 21, 2020 through November 30, 2021. Doc. #20. Debtor's confirmed plan provides for \$8,725.00 in attorney's fees to be paid through the plan. Plan, Doc. ##2, 13. No prior fee applications have been submitted. Debtor consents to the amount requested in Movant's application. Doc. #20.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Here, Movant demonstrates services rendered relating to: (1) pre-petition fact gathering and consultation; (2) preparing the voluntary petition, chapter 13 plan, and schedules; (3) attending the meeting of creditors; and (4) preparing the fee application. Exs. A, B & C, Doc. #22. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation and reimbursement for expenses in the amount of \$5,315 to be paid in a manner consistent with the terms of the confirmed plan.

2. [20-10509](#)-A-13 **IN RE: EDDIE CALDWELL**
[TCS-5](#)

MOTION TO MODIFY PLAN
2-1-2022 [[115](#)]

EDDIE CALDWELL/MV
TIMOTHY SPRINGER/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). On April 7, 2022, the chapter 13 trustee filed written opposition to plan confirmation. Doc. #123. 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. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

On February 1, 2022, Eddie Lee Caldwell ("Debtor") filed and served this motion to confirm the fifth modified chapter 13 plan and set the motion for hearing on April 28, 2022. Doc. ##115-121. The proposed plan seeks to extend the duration of payments to 84 months pursuant to the CARES Act. Plan, Doc. #120. However, the CARES Act amendments to 11 U.S.C. § 1329 that allowed for an extension of plan duration of up to 84 months ceased to be effective on March 27, 2022, and § 1329 has reverted to the pre-CARES Act language limiting plan modification to 60 months. See CARES Act Pub L. No. 116-136 § 1113(b); 11 U.S.C. § 1329. The plan cannot be confirmed because the plan duration of 84 months exceeds the five-year period set forth in 11 U.S.C. § 1329(c) (effective March 27, 2022).

Accordingly, Debtor's motion to confirm the fifth modified chapter 13 plan will be DENIED.

MOTION TO DISMISS CASE
3-28-2022 [\[18\]](#)

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

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

DISPOSITION: Granted.

ORDER: The court will issue 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 asks the court to dismiss this case for:
(1) unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)); and (2) failure to confirm a plan (11 U.S.C. § 1307(c)), mainly because Debtor has failed to file a motion to value as required by the terms of Debtor's proposed plan. Doc. #18.

A review of Debtor's Schedules A/B and D shows that Debtor's significant assets, vehicles and real property, are over encumbered. Debtor claims exemptions in the remaining assets. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate. Debtor 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 debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(3) for failing to accomplish the tasks required by the proposed plan and failing to confirm a chapter 13 plan.

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

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
4-7-2022 [[13](#)]

JOEL WINTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Jack De Fehr ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on March 1, 2022. Doc. #1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because (1) the meeting of creditors has not yet concluded, and (2) Debtor will not be able to make all payments under the plan and comply with the plan as required by 11 U.S.C. § 1325(a)(6). Doc. #13.

Rather than continue the hearing on Plan confirmation to allow the meeting of creditors to be concluded, the court is inclined to sustain the objection and deny confirmation because Debtor will be unable to comply with the Plan.

The Plan calls for monthly payments of \$732.05 for 60 months with no nonstandard provisions. Plan, Doc. #3. The Plan lists Chase Home Finance LLC ("Chase") in Class 1 and asserts an arrearage of \$9,976.17 on which Debtor will pay a monthly arrearage dividend of \$162.82. Class 1 of the Plan also calls for a post-petition monthly payment to Chase of \$258. The Plan also lists Chase in Class 2(A) and provides for a monthly dividend to Chase in Class 2(A) of \$162.82. Doc. #3. Chase, as JPMorgan Chase Bank N.A., filed a proof of claim on March 23, 2022 asserting a secured claim of \$29,300.93 and an arrearage of \$10,488.17. Claim 1. Debtor scheduled monthly net income of \$783. Schedules I & J, Doc. #1.

Trustee contends that Debtor cannot provide for Chase in both Class 1 and Class 2 of the Plan and must list Chase as a single creditor. Doc. #13. Further, if Debtor were to provide for Chase in Class 1, Chase would be paid pursuant to the proof of claim, which would increase the arrearage to \$10,488.17 and the ongoing monthly payment to \$555.71. Doc. #13. In making these changes, the monthly Plan payment would need to be increased at least to \$1,047.06 to fund the Plan over 60 months. Doc. #13.

Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6). Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #3. Here, the

adjustments required to the Plan after accounting for and consolidating Chase's claim make the Plan unfeasible.

Accordingly, pending any opposition at the hearing, the objection will be SUSTAINED.

5. [22-10322](#)-A-13 **IN RE: JACK DE FEHR**
[NLL-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION
4-12-2022 [[17](#)]

JPMORGAN BANK, NATIONAL ASSOCIATION/MV
JOEL WINTER/ATTY. FOR DBT.
NANCY LEE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Jack De Fehr ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on March 1, 2022. Doc. #1, 3. JPMorgan Chase Bank National Association ("Chase") objects to confirmation of the Plan because the Plan improperly modifies Chase's lien. Doc. #17.

The Plan calls for monthly payments of \$732.05 for 60 months with no nonstandard provisions. Plan, Doc. #3. The Plan lists Chase in Class 1 and asserts an arrearage of \$9,976.17 on which Debtor will pay a monthly arrearage dividend of \$162.82. Class 1 of the Plan also calls for a post-petition monthly payment to Chase of \$258. The Plan also lists Chase in Class 2(A), asserting a claim of \$27,978.07 on which Debtor will pay 0% interest, for a monthly dividend to Chase in Class 2(A) of \$162.82. Doc. #3. Chase filed a proof of claim on March 23, 2022, asserting a secured claim of \$29,300.93 and an arrearage of \$10,488.17. Claim 1. Chase will be paid in accordance with its proof of claim, and Chase has no issue with the Plan separating Chase's claim. However, Chase contends it is entitled to an interest rate of 3.25% in Class 2(A). Doc. #17; Claim 1.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #3. The Plan further provides that, except as permitted by § 1322(c), "Debtor is prohibited from modifying the rights of a holder of a claim secured only by Debtor's principal residence." Plan § 3.08(c)(3), Doc. #3. Debtor is not seeking to modify Chase's claim pursuant to § 1322(c), and Chase's proof of claim shows that it is entitled to an

interest rate of 3.25%. The Plan improperly modifies Chase's rights as a holder of a claim secured only by Debtor's principal residence.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

6. [17-14163](#)-A-13 **IN RE: JOHN/RITA CORSON**
[PK-5](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
4-7-2022 [[118](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Patrick Kavanagh ("Movant"), counsel for John Peter Corson and Rita Gail Corson (together, "Debtors"), the debtors in this chapter 13 case, requests allowance of final compensation in the amount of \$8,000 for services rendered November 1, 2017 through case closing. Doc. #118. Debtors' confirmed plan provides for \$6,000.00 in attorney's fees paid through the plan. Plan, Doc. ##5, 44. Movant received a \$2,000 pre-petition retainer. Id. No prior fee applications have been submitted.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) claim administration and objections; (2) original and modified plan hearings and objections; and (3) preparation for discharge and case closing. Exs., Doc. #120. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant, including the pre-petition retainer, are reasonable and necessary. The court allows on a final basis all fees and expenses previously paid to Movant, in addition to compensation requested by this motion in the amount of \$8,000 to be paid in a manner consistent with the terms of the confirmed plan.

MOTION TO DISMISS CASE
3-29-2022 [22]

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an 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 asks the court to dismiss this case for:

- (1) Unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)).
- (2) The debtor's failure to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4).
- (3) The debtor's failure to file complete and accurate schedules and statements. [11 U.S.C §521] and/or Fed. R. Bankr. P. 1007. Specifically, the debtor's Schedule E/F is incomplete and the debtor's Statement of Financial Affairs is blank.
- (4) The debtor's failure to file the correct form for Chapter 13 Plan as provided by the Local Rule 3015-1(a) Official Local Form EDC 3-080 (rev. 11/9/18) and General Order GO.18-03 Order Adopting Attached Chapter 13 Plan as Official Local Form EDC 3-080. The debtor used Official Form 113.
- (5) The debtor's failure to set a hearing to confirm the debtor's modified plan with notice to creditors.

Doc. #22. A review of the debtor's Schedules A/B and D shows that the debtor's significant assets, vehicles and real property, are over encumbered. The debtor claims exemptions in the remaining assets. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion to

chapter 7, is in the best interests of creditors and the estate. Doc. #22. The debtor did not oppose the 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 due to the debtor's failure to submit the required forms, file a confirmable chapter 13 plan, and failure to transmit the required documentation to the chapter 13 trustee.

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

8. [17-13897](#)-A-13 **IN RE: LETICIA RANGEL**
[SL-1](#)

MOTION TO AVOID LIEN OF FINANCIAL CREDIT NETWORK
4-13-2022 [\[28\]](#)

LETICIA RANGEL/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice by mail of this motion was first sent on April 13, 2022, followed by an amended Notice of Hearing on April 14, 2022, both with a hearing date set for April 28, 2022. The motion was set for hearing on less than 28 days' notice and is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition was not required, and any opposition may be raised at the hearing. However, the original and amended Notice of Hearing filed with the motion both state that opposition must be filed and served no later than fourteen days before the hearing and that failure to file written response may result in the court granting the motion prior to the hearing. Neither the original Notice of Hearing nor amended Notice of Hearing comply with LBR 9014-1(f)(2).

9. [21-12175](#)-A-13 **IN RE: SHANNON SIMPSON**
[MHM-3](#)

CHAPTER 13 TRUSTEE'S FORBEARANCE STATUS CONFERENCE
4-21-2022 [[72](#)]

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

NO RULING.

On January 31, 2022, U.S. Bank National Association, as Trustee ("Creditor") filed a Notice of Debtor's Request for Forbearance Extension. Creditor extended the forbearance on the debtor's mortgage starting September 1, 2021 through and including the payment due April 1, 2022. See Doc. #72. The nonstandard provisions of the Second Modified Chapter 13 Plan filed on April 15, 2022 state that the debtor has received a mortgage forbearance through December 2022. Plan, Doc. #70. As of April 22, 2022, Creditor had not filed a Notice of Debtor's Request for Forbearance Extension extending the forbearance period through December 2022.

Pursuant to General Order 20-03, the chapter 13 trustee set this forbearance status conference to determine whether Creditor has extended the forbearance as indicated in the Second Modified Plan filed April 15, 2022.

11:00 AM

1. [21-11034](#)-A-7 **IN RE: ESPERANZA GONZALEZ**
[21-1031](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
7-26-2021 [[1](#)]

ABLP PROPERTIES VISALIA, LLC V. GONZALEZ
DON POOL/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 2, 2022, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the plaintiff's status conference statement (Doc. #20), the status conference will be continued to June 2, 2022, at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than May 26, 2022.

2. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[17-1086](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
9-5-2018 [[131](#)]

KODIAK MINING & MINERALS II LLC ET AL V. DON ROSE OIL CO.,
VONN CHRISTENSON/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 30, 2022, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status conference statement (Doc. #605), the status conference will be continued to June 30, 2022, at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than June 23, 2022.

MOTION BY JUSTIN D. HARRIS TO WITHDRAW AS ATTORNEY
4-25-2022 [\[26\]](#)

ABLP PROPERTIES VISALIA, LLC V. GONZALEZ
OST 4/25/22

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.

On April 25, 2022, the court granted the movant's ex parte Motion for Order Shortening Time to hear the movant's Motion to Withdraw as Counsel. Doc. #30. This motion was set for hearing on April 28, 2022 at 11:00 a.m. pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3). Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether a further hearing is proper. The court will issue an order if a further hearing is necessary.

Justin D. Harris and Harris Law Firm PC ("Movant"), counsel for Esperanza Hansen Gonzalez ("Defendant"), the defendant and chapter 7 debtor, moves to withdraw as Defendant's attorney of record. Doc. #26. Movant seeks withdrawal as attorney of record in Defendant's adversary proceeding and related bankruptcy case pending before this court as Case No. 21-11034. Movant's withdrawal will leave Defendant unrepresented by counsel.

LBR 2017-1(e) states that "an attorney who has appeared may not withdraw leaving the client *in propria persona* without leave of court upon noticed motion and notice to the client and all other parties who have appeared." The local rule goes on to require the attorney seeking withdrawal to "provide an affidavit stating the current or last known address" of the client and "the efforts made to notify the client of the motion to withdraw." LBR 2017-1(e). Withdrawal is governed by the California Rules of Professional Conduct. Id.

Movant has conformed with the Local Rules. Movant testifies as to Defendant's current or last known address and explains that he emailed Defendant on April 22, 2022 notifying Defendant of Movant's intention to seek an ex parte order shortening time on a motion to be relieved as counsel to be heard on April 28, 2022 at 11:00 a.m. Decl. of Justin D. Harris, Doc. #28. The certificate of service filed with this motion shows that Defendant received notice via electronic mail and U.S. mail. Doc. #29. Service was also made upon the plaintiff, the chapter 7 trustee, and the United States trustee. Doc. #29.

Pursuant to California Rules of Professional Conduct Rule 1.16, formerly Rule 3-700, a lawyer may withdraw from representing a client if the client breaches a material term of an agreement with the lawyer and the lawyer has given the client reasonable warning of withdrawal, if a continuation of the representation is likely to result in a violation of the rules, if the client renders it unreasonably difficult for the lawyer to carry out the representation effectively, or if other good cause for withdrawal exists. Rules

Prof. Conduct 1.16(b), <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules>.

Movant submits that Defendant accuses Movant of professional negligence. Decl. of Movant, Doc. #28. Movant also testifies that there has been a fundamental breakdown in the attorney-client relationship that makes it unreasonably difficult for Movant to continue with Movant's representation of Defendant. Id. Movant intends to comply with California Rule of Professional Conduct 1.16(e), which requires Movant to turn over any client materials and refund any part of a fee or expense paid in advance that the lawyer has not earned or incurred. Doc. #26. It appears that Movant's withdrawal will cause no undue prejudice to Defendant and Movant has demonstrated cause for withdrawal.

Accordingly, this motion will be GRANTED.