



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

**HONORABLE RENÉ LASTRETO II
Department B – 510 19th Street
Bakersfield, California**

Hearing Date: Wednesday, May 3, 2023

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be as instructed below.

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) via **ZOOMGOV VIDEO**, (2) via **ZOOMGOV TELEPHONE**, and (3) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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Please join at least 10 minutes before the start of your hearing. You are required to give the court 24 hours advance notice on [Court Calendar](#).

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Procedures and Guidelines](#) for these and additional instructions.
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Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screenshots" or other audio or visual copying of a hearing, is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

Post-Publication Changes: 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 any possible updates.

9:00 AM

1. [18-11505](#)-B-13 IN RE: MIGUEL GONZALEZ AND ADRIANA MELENDREZ-GONZALEZ
[PK-8](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
4-12-2023 [114]

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 hearing.

Patrick Kavanagh ("Applicant"), attorney for Miguel Angel Gonzalez and Adriana Melendrez-Gonzalez (collectively "Debtors"), requests final compensation in the sum of \$700.00 pursuant to 11 U.S.C. § 330. Doc. #114. Applicant has waived reimbursement of expenses, and therefore, this amount consists solely of fees as reasonable compensation for services rendered from October 12, 2021 through case closing. *Id.* Applicant also requests final approval of \$5,300.00 in compensation previously awarded on November 5, 2023.

Applicant included a statement of consent executed by Debtors on May 13 and 24, 2023, which indicates that Debtors have read the fee application and approve the same. Doc. #118.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Fed. R. Bankr. P. 2002(a)(6) 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.

Section 3.05 of Debtors' confirmed plan provides Applicant was paid \$0.00 prior to filing the case and, subject to court approval, additional fees of \$6,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329 & 330 and Rules 2002, 2016-17. Docs. #78; #89. The *Disclosure of Compensation of*

Attorney form, B2030, indicates that the \$310.00 filing has been paid. Doc. #1.

This is Applicant's second and final fee application. Doc. #114. On November 5, 2021, the court approved payment of \$5,300.00 to Applicant on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Docs. #105; #108.

Applicant's firm provided 5.7 billable hours of legal services at a rate of \$300.00 per hour, totaling \$1,770.00 in fees. Docs. #114; *Exs. B-C*, Doc. #116. However, Applicant has waived all fees in excess of **\$700.00**, as well as all expenses. *Ex. A, id.*; Doc. #114. Since Applicant has been paid \$5,300.00 under the first fee application, Applicant is seeking payment of **\$700.00** through the plan.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services here included, without limitation: (1) finalizing the first fee application (PK-7); (2) reviewing and forwarding a notice of mortgage payment change; (3) reviewing notice of default; and (4) preparing and filing this fee application (PK-8). *Ex. A*. Doc. #116. The court finds the services and expenses reasonable, actual, and necessary. Debtors have consented to the proposed payment of fees. Doc. #118.

This matter will be called and proceed as scheduled. The court is inclined to GRANT the motion. Applicant will be awarded \$700.00 in fees as reasonable compensation for services rendered from October 12, 2021 through case closing on a final basis pursuant to 11 U.S.C. § 330. *Id.* The court will also authorize, on a final basis under § 330, the \$5,300.00 in compensation previously awarded on November 5, 2023. The total compensation for Applicant in this case will be \$6,000.00.

2. [23-10215](#)-B-13 **IN RE: ALICE CAMERON**
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL
ASSOCIATION
3-6-2023 [\[26\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV
D. GARDNER/ATTY. FOR DBT.
JENNIFER WONG/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.

U.S. Bank National Association, as Trustee for Structured Asset
Investment Loan Trust Mortgage Pass-Through Certificates, Series 2006-
4 ("Creditor"), objects to confirmation of the *Chapter 13 Plan*
proposed by Alice Diana Cameron ("Debtor") on February 17, 2023
pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4). Doc. #26.
Creditor objects under 11 U.S.C. §§ 1322(b)(2), (b)(5), and
1325(a)(5)(B) because the plan fails to provide for Creditor's total
claim to be paid in full during the plan term.

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.

Creditor's claim is secured by a promissory note securing Debtor's
real property commonly known as 3902 Ocean Breeze Ave., Bakersfield,
CA 93313 ("Property"), which matures on February 1, 2026. See Claim 5-
1; *Exs. 1-2*, Doc. #28. Creditor's claim (Claim 5) includes a
substantial arrearage - over \$86,000.00. The Creditor's claimed
balance owed is also included. *Id.*

Debtor's plan understates the amount of arrears. Doc. #16. Though plan
section 3.02 provides that it is the proof of claim, and not the plan
itself, that determines the amount that will be repaid, section
3.07(b)(2) requires the payment to be adjusted accordingly for a class
1 claim.

Therefore, this objection will be SUSTAINED.

3. [22-11720](#)-B-13 **IN RE: ERIN STEVENSON**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
2-23-2023 [\[41\]](#)

MICHAEL MEYER/MV
MATTHEW DECAMINADA/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 7, 2023 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was originally heard on April 5, 2023. Doc. #46.

Chapter 13 trustee Michael H. Meyer ("Trustee") asked the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors [11 U.S.C. § 1307(c)(1)], failure to file tax returns for the years 2016-18 and 2020 [§ 1307(e)], failure to confirm a chapter 13 plan [§ 1307(c)], and failure to file complete and accurate file *Schedule E/F* [§ 521; Fed. R. Bankr. P. 1007]. Doc #41.

Erin David Stevenson ("Debtor") timely filed a response on March 22, 2023. Doc. #45. Debtor intended to file a modified plan to resolve the issues raised in Trustee's motion and claimed the required taxes and information have been sent to the Internal Revenue Service ("IRS"). *Id.*

Debtor filed a modified plan on March 31, 2023, which is set for hearing on June 7, 2023. MJD-1. Debtor also filed an *Amended Schedule E/F* on April 4, 2023. Doc. #55.

The court continued this hearing to allow for either Debtor to submit evidence in support of the contention that the taxes have been filed with the IRS, or for the IRS to amend its proof of claim. Docs. ##56-57. On April 11, 2023, the IRS filed Amended Proof of Claim No. 1-2, reducing the amount of its claim to \$0.00.

This matter will be CONTINUED to June 7, 2023 at 9:00 a.m. to be heard in connection with Debtor's motion to modify plan.

4. [23-10030](#)-B-13 **IN RE: CRISTY PAREDES**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
2-10-2023 [[17](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

5. [23-10030](#)-B-13 **IN RE: CRISTY PAREDES**
[RAS-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY PHH MORTGAGE
CORPORATION
1-26-2023 [[14](#)]

PHH MORTGAGE CORPORATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
FANNY WAN/ATTY. FOR MV.

NO RULING.

6. [22-11741](#)-B-13 **IN RE: JOSEPH MARTIN**
[MHM-2](#)

MOTION TO DISMISS CASE
3-16-2023 [[40](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 17, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

The chapter 13 trustee's motion to dismiss will be CONTINUED to May 17, 2023 at 9:30 a.m. to be heard in connection with the debtor's motion to modify plan. See, Docs. ##46-52; NES-1.

7. [23-10143](#)-B-13 **IN RE: VICTOR CORDOVA**
[SKI-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR
CREDIT COMPANY LLC
2-15-2023 [\[13\]](#)

FORD MOTOR CREDIT COMPANY LLC/MV
GREGORY SHANFELD/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Debtor Victor Manuel Cordova withdrew the proposed chapter 13 plan on April 19, 2023. Doc. #28. Accordingly, creditor Ford Motor Credit Company LLC's objection to confirmation will be OVERRULED AS MOOT.

8. [19-15245](#)-B-13 **IN RE: RITA AGCAOILI**
[PK-2](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
3-29-2023 [\[80\]](#)

PATRICK KAVANAGH/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.

Patrick Kavanagh ("Applicant"), attorney for Rita M. Agcaoili ("Debtor"), seeks interim compensation in the sum of \$5,500.00 under 11 U.S.C. § 331, subject to final review pursuant to § 330. Doc. #80. Since Applicant has waived expenses, this amount is solely for fees as reasonable compensation for services rendered from November 27, 2019 through March 27, 2023. *Id.*

Debtor executed a statement of consent dated March 29, 2023, indicating that Debtor has read the fee application and approves the same. § 9(7), *id.*

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Section 3.05 of Debtor's confirmed plan provides Applicant was paid \$1,199.00 prior to filing the case and, subject to court approval, additional fees of \$5,086.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329 & 330 and Rules 2002, 2016-17. The *Disclosure of Compensation of Attorney* form, B2030, indicates that the \$310.00 filing has been paid. Doc. #1.

This is Applicant's first interim fee application. Doc. #31. Applicant provided 23.9 hours (billing for 22.2 of those hours) of legal services at a rate of \$300.00 per hour, totaling \$6,660.00 in fees. *Exs. B-C*, Doc. #82. However, Applicant has waived all fees in excess of **\$5,500.00**, as well as all expenses. *Ex. A, id.*; Doc. #80. Since Applicant received a pre-petition retainer of \$1,199.00, Applicant is seeking payment of **\$4,301.00** through the plan.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services here included, without limitation: (1) advising Debtor of bankruptcy and non-bankruptcy alternatives; (2) preparing schedules, the plan, and petition; (3) responding to a motion to dismiss (MHM-1), which was ultimately withdrawn; (4) confirming the original plan; (5) preparing, filing, and confirming a modified plan over opposition (PK-1); and (6) preparing and filing this fee application (PK-2). *Exs. A-C*, Doc. #82. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Debtor reviewed the fee application and consents to payment of the requested compensation. § 9(7), Doc. #80.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$5,500.00 in fees on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. After application of the \$1,199.00 in pre-petition payments, the chapter 13 trustee will be authorized, in the trustee's discretion, to pay Applicant \$4,301.00 for services rendered between November 27, 2019 through March 27, 2023.

9. [22-12056](#)-B-13 **IN RE: SHANNON HAGER**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
2-27-2023 [[23](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

This objection was originally heard on April 5, 2023. Doc. #39.

Chapter 13 trustee Michael H. Meyer ("Trustee") objected to confirmation of *Chapter 13 Plan* proposed by Shannon Hager ("Debtor") on December 28, 2023 under Local Rule of Practice ("LBR") 3015-1(c)(4) and 11 U.S.C. §§ 1322(b)(2) & 1325(a)(1) because the plan impermissibly modifies the claim of creditors whose claims are secured only by a security interest in real property that is the debtor's principal residence. Doc. #23.

The court continued the objection and ordered Debtor to file and serve a written response to the objection to confirmation not later than April 19, 2023, or to file a confirmable, modified plan not later than April 26, 2023, or the objection would be sustained for the grounds stated without further hearing. Docs. ##39-40. Trustee was directed to file a reply, if any, not later than April 26, 2023. *Id.*

On April 19, 2023, Debtor timely responded to Trustee's objection. Doc. #42.

Trustee timely replied on April 26, 2023. Doc. #53.

Debtor's residence at 2313 Sycamore Lane, Pine Mountain Club, CA 93222 ("Property") was sold at a non-judicial foreclosure sale on November 7, 2022. Debtor filed bankruptcy on December 1, and on December 2, 2022, the trustee's deed upon sale was recorded.

Under the prior law, since the deed was recorded more than 15 days after the sale, Debtor contends the recording would be void as a violation of the automatic stay for failing to relate back to the date of the sale. Doc. #42.

However, non-judicial foreclosure laws were changed effective January 1, 2021, as codified in Cal. Civ. Code ("CC") § 2924m. This section provides for different deadlines depending on whether the buyer is a "prospective owner occupant," an "eligible tenant buyer," and an "eligible bidder." CC § 2924m(a)(1)-(3). Depending on the circumstances, eligible tenant buyers and eligible bidders may be permitted to submit either a bid or a nonbinding written notice of intent to place such bid. CC § 2924m(c)(2). If a bid or nonbinding written notice of intent to bid are received, the date on which the sale becomes final and recording deadlines are extended. CC §§ 2924h, 2924m(c)(3).

Debtor cites to a recent decision from a U.S. Bankruptcy Court in the Central District of California, *In re Ford*, No. 2:22-bk-13649-WB, 2022 LEXIS 3545 (Bankr. C.D. Cal. Dec. 15, 2022). Debtor's counsel argues this case is on point. Doc. #42. However, Debtor retained a real estate attorney who believes that *Ford* may be improperly decided.

Regardless of whether *Ford* was correct, Debtor asks that the plan be confirmed because she is current on plan payments and has met all other requirements for confirmation. *Id.* If the sale is invalid, then Flagstar Bank will need to be paid. If the sale is deemed valid, however, then funds paid to Flagstar Bank will be returned. On this basis, Debtor asks the court to overrule Trustee's objection.

In reply, Trustee notes that Flagstar Bank has not filed a proof of claim and has returned the one ongoing payment disbursed by Trustee at the end of February 2023. Doc. #53. Flagstar Bank has been fully paid from the proceeds of the foreclosure sale. Therefore, the plan cannot be confirmed because it erroneously provides for payment to Flagstar Bank. *Id.*

Trustee also notes that the buyer of the Property, Ian McGilvray, has filed a motion to annul the stay. *Id.*; Doc. #44. That motion is set for hearing on May 17, 2023.

This matter will be called and proceed as scheduled. The court is inclined to SUSTAIN the objection because the plan erroneously provides for payment to Flagstar Bank, whose claim has been fully paid from the proceeds of the foreclosure sale of Property.

10. [21-12561](#)-B-13 **IN RE: AMANDA GROAH**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
3-8-2023 [[28](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 7, 2023 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was originally heard on April 12, 2023. Doc. #34.

Chapter 13 trustee Michael H. Meyer ("Trustee") asked the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay by debtor that is prejudicial to creditors and material default by the debtor with respect to a term of a confirmed plan. Doc #28.

Amanda Roselle Groah ("Debtor") timely responded on March 29, 2023, indicating that debtor will pay \$1,700.00 on March 31, 2023 and \$800.00 during the week of April 2, 2023. Doc. #32.

This motion was continued to May 3, 2023 at 9:00 a.m. based on representations from the Trustee at the hearing and Debtor's counsel prior to the hearing that Debtor's counsel would be unavailable. Docs. #34; #36.

On April 26, Debtor filed a supplemental response and a motion to modify plan, which is set for hearing on June 7, 2023. Docs. ##39-45. Accordingly, this motion will be CONTINUED to June 7, 2023 at 9:00 a.m. to be heard in connection with Debtor's motion to modify plan.

11. [22-11665](#)-B-13 **IN RE: EDWIN LEDFORD**
[MHM-2](#)

MOTION TO DISMISS CASE
3-16-2023 [\[38\]](#)

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

TENTATIVE RULING: This matter will be called as scheduled.

DISPOSITION: Granted; converted to chapter 7 or dismissed.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") moved to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors and failure to confirm a chapter 13 plan (11 U.S.C. § 1307(c)(1)). Doc. #38

On April 19, 2023, Edwin Michael Ledford ("Debtor") timely filed a response. Doc. #42. Debtor acknowledges that he is not eligible for a chapter 7 discharge but states that he may still benefit from conversion. Debtor's house is in foreclosure and there is substantial equity available to creditors if Debtor changes exemptions and the case is converted.

This matter will be called and proceed as scheduled to inquire whether Debtor has decided to amend his exemptions. If so, this motion may be GRANTED AS MODIFIED and CONVERTED TO CHAPTER 7. Otherwise, this motion will be GRANTED, and the case dismissed.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtor are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). 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.

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 and failure to confirm a chapter 13 plan.

Here, there is cause for dismissal or conversion because Debtor has failed to confirm a chapter 13 plan.

Trustee has reviewed the schedules and determined that this case has a liquidation value of \$4,117.50 after trustee compensation if the case were to be converted to chapter 7. Doc. #40. This amount is comprised of value of Debtor's 2016 Chevy Colorado, 1996 Toyota Corolla and funds in a bank account at time of filing. Id. Although the liquidation value of this case is *de minimis*, Debtor says he can amend his exemptions to allow a chapter 7 trustee to liquidate Property. Therefore, dismissal, rather than conversion, currently serves the interests of creditors and the estate. However, if Debtor amends his exemptions, conversion may be in the best interests of creditors and the estate.

11 U.S.C. § 1307(g) restricts the conversion of a case to another chapter unless the debtor may be a debtor under such chapter. Therefore, Debtor must be eligible to be a debtor under chapter 7 for the case to be converted.

11 U.S.C. § 109(b) sets forth the eligibility requirements to be a debtor under chapter 7. Omitted from that list is receipt of a discharge. Thus, although Debtor is ineligible for a discharge under 11 U.S.C. § 727(a)(8) because Debtor received a discharge within the last eight years, Debtor is still eligible to be a chapter 7 debtor.¹

This matter will be called and proceed as scheduled to inquire whether Debtor has amended his exemptions. If so, this motion will be GRANTED AS MODIFIED and CONVERTED TO CHAPTER 7. Otherwise, this motion may be GRANTED, and the case dismissed.

¹ Debtor received a chapter 7 discharge on July 9, 2018. Case No. 18-10879 (Bankr. E.D. Cal.).

12. [23-10274](#)-B-13 **IN RE: ATHENA ALANIZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-27-2023 [\[26\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the
 court's findings and conclusions.

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the Order to Show Cause. Doc. #26.

The record shows that on March 21, 2023, Debtor paid the installment fee due on March 20, 2023. Debtor's payment was rejected for insufficient funds and a Notice Regarding Non-Sufficient Funds was served on Debtor. Doc. #27.

If the installment fees due at the time of hearing are paid before the hearing, the order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

13. [23-10075](#)-B-13 **IN RE: REFUJIO GUILLEN**
 [DMG-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY PEOPLE OF THE
STATE OF CALIFORNIA
3-9-2023 [\[24\]](#)

PEOPLE OF THE STATE OF CALIFORNIA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

NO RULING.

This objection was originally heard on April 5, 2023. Doc. #35.

The People of the State of California ("People") objected to confirmation of the *Chapter 13 Plan* proposed by Refugio Guillen ("Debtor") on February 15, 2023 because (i) the plan is not proposed in good faith [11 U.S.C. § 1325(a)(3)], (ii) the plan does not satisfy the best interests of creditors test [§ 1325(a)(4)], and (iii) the plan is not feasible [§ 1325(a)(6)]. Doc. #24.

The court continued the objection and ordered Debtor to file and serve a written response to the objection to confirmation not later than April 19, 2023, or to file a confirmable, modified plan not later than April 26, 2023, or the objection would be sustained for the grounds stated without further hearing. Docs. #35; #40. The People were directed to file a reply, if any, not later than April 26, 2023. *Id.*

On April 19, 2023, Debtor timely filed a response with supporting declarations and exhibits. Docs. ##55-60. Debtor also filed *Amended Schedules A/B and D* and an *Amended Master Address List*. Docs. ##62-63.

The People timely replied. Doc. #67.

The court takes judicial notice of all documents filed in connection with the chapter 13 trustee's objection to confirmation in matter #14 below, MHM-1. Fed. R. Evid. 201.

This objection will be called and proceed as scheduled.

BACKGROUND

Prior to filing bankruptcy, Debtor owned an interest in multiple parcels of real property.

Knotts Property

Debtor owned a commercial rental property at 902 Knotts St., Bakersfield, CA 93305 ("Knotts Property"). Doc #51. In 2015, Knotts Property was rented to Jovany Villa ("Tenant"), who was allowed to make payments towards purchasing it. At some point during the tenancy, Tenant sublet Knotts Property to a third party, who used it to operate an illegal marijuana dispensary. *Id.*

The People of the State of California ("People") caught on and filed an action against Debtor in Kern County Superior Court on October 27, 2021. *Ex. A*, Doc. #26. On June 7, 2022, the People obtained a \$2 million dollar default judgment against Debtor, which was recorded in Kern County in September 2022. *Id.*

While the People's state court action was pending, Debtor sold Property to Tenant on November 3, 2021. Debtor claims it was sold for \$84,000, less a down payment of \$9,000 paid through rent. Doc. #51. Debtor included copies of the *Contract for Deed* and *Notice of Balloon Payment Due* as exhibits in response to the People's related objection to confirmation. *See, Exs. 1-2*, Doc. #60.

The People subsequently filed an action under the Uniform Voidable Transfer Act ("UVTA") seeking to void the transfer of Knotts Property from Debtor to Tenant. *Ex. B*, Doc. #26.

Kaibab Property

Debtor owns rental property at 2419 Kaibab Ave., Bakersfield, CA 93306 ("Kaibab Property"), which is listed in the schedules with a value of \$220,000.00. *Am. Sched. A/B*, Doc. #62. Debtor has a mortgage on Kaibab Property, but Debtor's brother-in-law lives there and pays rent. Debtor claims his brother-in-law is steadily employed and will pay rent timely.

Since Kaibab Property is located in Kern County, it is subject to the People's recorded \$2 million judgment lien.

Tulare County Property

Debtor owns a 50% interest in a parcel of property located at 4919 Deer Creek Mill Rd., Pine Flat, CA 93207 in Tulare County ("Tulare County Property"). Doc. #28. Tulare County Property includes 125 acres of hunting land with an unpermitted structure, which is encumbered by a \$395,000 deed of trust. *Id.* The holders of the note for that deed of trust were not originally listed as creditors in this case.

Debtor's *Amended Schedule A/B* lists this interest as having a total value of \$525,000, with Debtor's 50% interest totaling \$262,500. Doc. #62. The schedules suggest that Debtor's net value is "probably nothing" because Debtor has not been paying his share of the payments and taxes and Debtor paid \$120,000 less than the other co-owner, Ruben Cervantes.

Debtor says he borrowed money against Knotts Property for a loan to Cervantes so Cervantes could make a \$125,000 down payment for the purchase of Tulare County Property. Doc. #51. Debtor agreed to invest \$5,000 and to make half of the monthly payments and taxes, which he did until the People filed their injunctive action.

Cervantes paid back the \$125,000 and Debtor paid off the loan on Knotts Property. It is unclear whether Debtor's \$5,000 investment was paid back. Debtor does not believe that it has any value exceeding \$525,000. Debtor does not know what Cervantes will do when the note securing Tulare County Property matures on July 1, 2023. Debtor has not been able to get into contact with Cervantes, but he will inform his attorney if he becomes aware of any proposed sale or refinance by Cervantes.

Debtor's *Amended Master Address List* added Edward & Betty Holtsnider as parties in interest to this case, but it is unclear whether they are the holders of the deed of trust for Tulare County Property. Doc. #63.

Debtor's Proposed Plan

Under the proposed plan, Debtor proposes to make monthly payments of \$3,000.00 per month for 60 months. Plan § 7, Doc. #22. Debtor will also pay an additional \$100,000 by January 2024 as needed to make the plan feasible, which will come from the sale or refinance of Debtor's real property. After paying administrative expenses, all additional

funds shall be paid to the People. *Id.* The People will be paid \$1,841 per month for months 1-45, \$2,775 for months 46-60, and an additional \$92,500 in month 13:

Month	Payment	Total
Months 1-45	\$1,841	\$82,845
Month 13	\$92,500	\$92,500
Months 46-60	\$2,775	\$41,625
Total		\$216,970

Id. Lastly, the plan proposes to provide a dividend to allowed, non-priority unsecured claims in an amount to be determined based on a liquidation analysis if this were hypothetically a chapter 7 case.

Debtor's *Schedules I & J* indicate receipt of \$3,004.63 in monthly net income, which is sufficient to afford the proposed plan payment. *Sched. J*, Doc. #20. However, that value includes a \$2,000 monthly contribution from Debtor's 18- and 20-year-old children. *Sched. I, id.* Without that contribution, Debtor would have \$1,004.63 in monthly net income.

Debtor acknowledges that the People's debt is nondischargeable as a penalty under 11 U.S.C. § 523(a)(7). However, Debtor is seeking a discharge under 11 U.S.C. § 1328(a), which does provide for the discharge of a debt under § 523(a)(7).

DISCUSSION

The People object for three reasons.

Good Faith

First, the People contend that the plan was not proposed in good faith as required by 11 U.S.C. § 1325(a)(3) under the totality of the circumstances test. Doc. #24. The People describe this case as a two-party dispute in which Debtor is seeking to deter the People from setting aside a fraudulent transfer and to limit the People's collection rights for a five-year period. *Id.*, citing *In re Welsh*, 711 F.3d 1120, 1132-33 (9th Cir. 2013) (the court should "focus on the debtor's motivation and forthrightness with the court in seeking relief.").

In response, Debtor acknowledges the UVTA suit in state court, but insists the People erred by incorrectly alleging Debtor had knowledge that the Knotts Property was being operated as an illegal cannabis dispensary. Doc. #55. Debtor says the Knotts Property was transferred to Tenant in November 2021, but not as a means of preventing the People from collecting. Without consulting counsel, Debtor believed that transferring title to the Knotts Property would end his legal troubles.

Debtor says the People are mistaken for believing the bankruptcy was filed to deter the People's efforts to set aside a fraudulent

transfer. Debtor is willing to stipulate to relief from stay to allow the state court action to proceed. Tenant is also a defendant in that case, so he can defend it if he chooses to do so. Debtor maintains that the People's fight is with Tenant, not Debtor.

Debtor also asserts this case was filed because he cannot afford to pay a \$2 million dollar penalty judgment for the actions taken by a subtenant of Tenant, with whom Debtor has no privity.

If the transfer of Knotts Property is voided, then Debtor will agree to sell it and pay the proceeds to the trustee for distribution to unsecured claims. Alternatively, it could be deeded to the People, as there are currently no other unsecured creditors. Debtor speculates that Tenant may defend the state court action because he paid for the Knotts Property. *Id.*

In reply, the People argue that Debtor has failed to meet his burden of proof on the issue of good faith. Doc. #67, citing *Meter v. Hill* (*In re Hill*), 268 B.R. 548, 552 (B.A.P. 9th Cir. 2002).

Best Interests of Creditors Test

Second, the proposed plan does not satisfy the best interests of creditors test under § 1325(a)(4) because it does not account for the value of the Knotts Property that was transferred, nor the value of Tulare County Property. Thus, neither the trustee nor creditors are able to complete a liquidation analysis to confirm the plan.

In response, Debtor claims his amended schedules now list a value for Tulare County Property at \$525,000. Doc. #62. However, Debtor claims it is unlikely Tulare County Property can be sold to generate proceeds for unsecured claims because (a) there is a \$352,000 note encumbering Tulare County Property, (b) Debtor is a 50% owner, (b) Debtor only invested \$5,000 while the co-owner invested \$125,000, and (c) Debtor has failed to make his share of payments for more than a year. Doc. #55.

Debtor does acknowledge receiving \$10,000 in proceeds post-petition from the note on Knotts Property. *Id.* This amount can be included in a liquidation analysis for payment to unsecured creditors. *Id.*

In reply, the People contend Debtor has failed to meet his burden of proof on this issue. Doc. #67. Specifically, Debtor has failed to establish (1) when he received payments for the sale of Knotts Property to Tenant, (2) whether Debtor loaned Ruben Cervantes \$125,000 and/or invested \$5,000 in the Tulare County property, and (3) how long Debtor made his half of the monthly payment until the People initiated an action against him. *Id.*

If the court is inclined to overrule the People's objection, they request continuance to conduct discovery on the issue of chapter 7 liquidation value.

Feasibility

Third, the People contend plan is not feasible under § 1325(a)(6) because it relies upon contributions from Debtors' 18- and 20-year-old children. *Id.* These children are expected to contribute \$2,000 for the next five years to fund the plan. Family member contributions in determining feasibility are disfavored. *In re Deutsch*, 529 B.R. 308, 312 (Bankr. C.D. Cal. 2015). The People contend that the children, at their age, do not have a history of ability to provide this much disposable income. Doc. #24. Further, the People argue is inherently unfair to expect his children to address Debtor's financial difficulty given the nature of his debt, which arose while they were minors, and chapter 13 should not be used to bind non-debtors to fund a plan. *Id.*

In response, Debtor asserts the plan is feasible because he has a permanent job, and his children and his brothers-in-law are committed to assisting Debtor in completing the plan. Doc. #55. Debtor included declarations from his children, Joey and Vanessa Guillen, and from his brothers-in-law, Juan Tostado and Jose Gonzalez. Docs. ##56-59.

In reply, the People contend that this court should not confirm a plan that uses family donations to pay a creditor to whom they are not liable to help Debtor discharge an extremely large percentage of that creditor's debt. Doc. #67.

Mr. Tostado's declaration is equivocal about contributing to the plan. Doc. #56. Mr. Tostado suggests he "can probably pay about \$750.00 monthly if needed." *Id.*; *Ex. 6*, Doc. #60. Meanwhile, Debtor's children, Joey and Vanessa Guillen, are employed in good jobs, but based on their pay stub information, the contribution they would need to make consumes a substantial amount of their earnings. Docs. ##57-58; *Exs. 3-4*, Doc. #60. To the court, that is insufficient even if there was evidence of a commitment for five years that was persuasive. There is not.

Finally, the declaration of Mr. Gonzalez, the renter of the Kaibab Property, claims to make approximately \$9,000 monthly and can contribute \$2,500 per month. Doc. #59; *Ex. 5*, Doc. 60. Even if accepted at face value, Debtor is not over the feasibility hurdle despite being more persuasive.

This objection will be called and proceed as scheduled.

14. [23-10075](#)-B-13 **IN RE: REFUJIO GUILLEN**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
3-22-2023 [\[28\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

This objection was originally heard on April 5, 2023. Doc. #36.

Chapter 13 trustee Michael H. Meyer ("Trustee") objected to confirmation of the *Chapter 13 Plan* filed by Refugio Guillen ("Debtor") on February 15, 2023 because (i) the plan fails to provide for the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim in at least the amount that would be paid if the estate was liquidated under chapter 7 [11 U.S.C. § 1325(a)(4)]; and (2) the debtor will not be able to make all payments under the plan and comply with the plan [§ 1325(a)(6)]. Doc. #28.

The court continued the objection and ordered Debtor to file and serve a written response to the objection to confirmation not later than April 19, 2023, or to file a confirmable, modified plan not later than April 26, 2023, or the objection would be sustained for the grounds stated without further hearing. Docs. #36; #41. Trustee was directed to file a reply, if any, not later than April 26, 2023. *Id.*

On April 19, 2023, Debtor timely filed a response with supporting declaration. Docs. ##50-51. Debtor also filed *Amended Schedules A/B* and *D* and an *Amended Master Address List*. Docs. ##62-63.

This objection will be called and proceed as scheduled.

BACKGROUND

Prior to filing bankruptcy, Debtor owned an interest in multiple parcels of real property.

Knotts Property

Debtor owned a commercial rental property at 902 Knotts St., Bakersfield, CA 93305 ("Knotts Property"). Docs. #28; #51. In 2015, Knotts Property was rented to Jovany Villa ("Tenant"), who was allowed to make payments towards purchasing it. At some point during the tenancy, Tenant sublet Knotts Property to a third party, who used it to operate an illegal marijuana dispensary. *Id.*

The People of the State of California ("People") caught on and filed an action against Debtor in Kern County Superior Court on October 27, 2021. *Ex. A*, Doc. #26. On June 7, 2022, the People obtained a \$2

million dollar default judgment against Debtor, which was recorded in Kern County in September 2022. *Id.*

While the People's state court action was pending, Debtor sold Property to Tenant on November 3, 2021. Trustee contends it was sold for no value. Doc. #28. However, Debtor claims it was sold for \$84,000, less a down payment of \$9,000 paid through rent. Doc. #51. Debtor included copies of the *Contract for Deed* and *Notice of Balloon Payment Due* as exhibits in response to the People's related objection to confirmation. See, *Exs. 1-2*, Doc. #60.

The People subsequently filed an action under the Uniform Voidable Transfer Act ("UVTA") seeking to void the transfer of Knotts Property from Debtor to Tenant. *Ex. B*, Doc. #26.

Kaibab Property

Debtor owns rental property at 2419 Kaibab Ave., Bakersfield, CA 93306 ("Kaibab Property"), which is listed in the schedules with a value of \$220,000.00. *Am. Sched. A/B*, Doc. #62. Debtor has a mortgage on Kaibab Property, but Debtor's brother-in-law lives there and pays rent. Debtor claims his brother-in-law is steadily employed and will pay rent timely.

Since Kaibab Property is located in Kern County, it is subject to the People's recorded \$2 million judgment lien.

Tulare County Property

Debtor's original *Schedule A/B* listed a 25% interest as an investor in a house in Tulare County that is in the name of the original owner. *Sched. A/B*, Doc. #10. However, Trustee discovered that Debtor actually owns a 50% interest in this parcel located at 4919 Deer Creek Mill Rd., Pine Flat, CA 93207 in Tulare County ("Tulare County Property"). Doc. #28. Tulare County Property includes 125 acres of hunting land with an unpermitted structure, which is encumbered by a \$395,000 deed of trust. *Id.* The holders of the note for that deed of trust were not originally listed as creditors in this case.

Debtor's *Amended Schedule A/B* lists this interest as having a total value of \$525,000, with Debtor's 50% interest totaling \$262,500. Doc. #62. The schedules suggest that Debtor's net value is "probably nothing" because Debtor has not been paying his share of the payments and taxes and Debtor paid \$120,000 less than the other co-owner, Ruben Cervantes.

Debtor says he borrowed money against Knotts Property for a loan to Cervantes so Cervantes could make a \$125,000 down payment for the purchase of Tulare County Property. Doc. #51. Debtor agreed to invest \$5,000 and to make half of the monthly payments and taxes, which he did until the People filed their injunctive action.

Cervantes paid back the \$125,000 and Debtor paid off the loan on Knotts Property. It is unclear whether Debtor's \$5,000 investment was

paid back. Debtor does not believe that it has any value exceeding \$525,000. Debtor does not know what Cervantes will do when the note securing Tulare County Property matures on July 1, 2023. Debtor has not been able to get into contact with Cervantes, but he will inform his attorney if he becomes aware of any proposed sale or refinance by Cervantes.

Debtor's *Amended Master Address List* added Edward & Betty Holtsnider as parties in interest to this case, but it is unclear whether they are the holders of the deed of trust for Tulare County Property. Doc. #63.

Debtor's Proposed Plan

Under the proposed plan, Debtor proposes to make monthly payments of \$3,000.00 per month for 60 months. Plan § 7, Doc. #22. Debtor will also pay an additional \$100,000 by January 2024 as needed to make the plan feasible, which will come from the sale or refinance of Debtor's real property. After paying administrative expenses, all additional funds shall be paid to the People. *Id.* The People will be paid \$1,841 per month for months 1-45, \$2,775 for months 46-60, and an additional \$92,500 in month 13:

Month	Payment	Total
Months 1-45	\$1,841	\$82,845
Month 13	\$92,500	\$92,500
Months 46-60	\$2,775	\$41,625
Total		\$216,970

Id. Lastly, the plan proposes to provide a dividend to allowed, non-priority unsecured claims in an amount to be determined based on a liquidation analysis if this were hypothetically a chapter 7 case.

Debtor's *Schedules I & J* indicate receipt of \$3,004.63 in monthly net income, which is sufficient to afford the proposed plan payment. *Sched. J*, Doc. #20. However, that value includes a \$2,000 monthly contribution from Debtor's 18- and 20-year-old children. *Sched. I, id.* Without that contribution, Debtor would have \$1,004.63 in monthly net income.

DISCUSSION

First, Trustee objected because the plan proposes for a 0% dividend to allowed, non-priority unsecured claims while the additional provisions state:

Section 3.14 is modified to provide that unsecured creditors shall be paid in an amount as required, by determining how much would be paid to unsecured creditors in a hypothetical Chapter 7 case. That amount is uncertain because the value of two assets may need to be determined by the court, or by what the debtor actually receives during the plan.

Doc. #28, quoting Plan, Section 7, Doc. #22.

Trustee believes the liquidation value of this case is comprised of the following assets:

Asset	Value	Description
2018 Honda Accord	\$9,000	Transferred to Debtor's son, Joey Guillen, in 2022 for no value.
1956 Chevrolet in pieces	\$500	Transferred to Debtor's son, Joey Guillen, in December 2022 for no value.
1955 Chevrolet in pieces	\$500	Transferred to Debtor's daughter, Vanessa Guillen, in December 2022 for no value.
Knotts Property	\$84,500	Transferred for no value to Tenant on Nov. 3, 2021 and encumbered by a \$2 million abstract of judgment in favor of the People. Potential value to the estate if the People are willing to carve out money for unsecured creditors.
Kaibab Property	\$220,000 with first deed of trust of \$81,858.03 (net value of \$138,141.97 excluding costs of sale and trustee fees)	Subject to the \$2 million abstract of judgment
50% interest in Tulare County Property	Unknown	Subject to a recorded deed of trust in the amount of \$395,000

Second, Trustee objected because 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). *Id.* Trustee contends that the liquidation value of this case is no less than \$10,000 but may exceed \$200,000 depending on the disposition of the above assets. Thus, any hypothetical plan payment would exceed \$3,004.63, which is Debtor's monthly net income in *Schedule J*. Therefore, any larger payment would not be feasible.

Lastly, Debtor's monthly net income of \$3,004.63 includes contributions of \$1,000 each from his 18- and 20-year-old children. However, no declarations from the children have been provided, including their financial situations, and whether they are willing and able to make monthly contributions of \$1,000 for the next five years.

In response, Debtor acknowledges that unsecured creditors must receive what they would in a chapter 7 but contends that it is difficult to determine the liquidation value in this case. Doc. #50.

Debtor claims he misremembered his ownership interest in Tulare County Property and has updated his schedules accordingly.

On this objection, Debtor's declaration concerning contributions from family members to the plan are hearsay. The insufficiency of the proof as to each is discussed above in connection with the People of the State of California's objection.

This objection will be called and proceed as scheduled.

15. [23-10075](#)-B-13 **IN RE: REFUJIO GUILLEN**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
3-22-2023 [\[31\]](#)

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

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

The chapter 13 trustee withdrew this motion on April 21, 2023. Doc. #65. Accordingly, this motion will be dropped and taken off calendar pursuant to the withdrawal.

16. [23-10078](#)-B-13 **IN RE: JASON/JULIE MUNIZ**
[MHM-1](#)

MOTION TO DISMISS CASE
3-31-2023 [\[17\]](#)

MICHAEL MEYER/MV
GREGORY SHANFELD/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice or granted.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by debtors that is prejudicial to creditors and failure to commence making timely payments under the plan. Doc #117.

On April 19, 2023, Jason Ryan Muniz and Julie Ann Muniz (collectively "Debtors") timely responded by filing a declaration and exhibits.

Docs. ##27-28. Debtors also filed *Amended Schedules A/B* and *D*.
Doc. #25.

This matter will be called and proceed as scheduled to inquire whether Debtors are current under the plan. If so, this motion will be DENIED WITHOUT PREJUDICE. Otherwise, this motion may be GRANTED, and the case dismissed.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtors 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 above-mentioned parties in interest except Debtors are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay and failure to commence making timely payments under the plan.

Here, Trustee contends Debtors are delinquent in the amount of \$6,724.00. Doc. #19. Before this hearing, another payment in the amount of \$4,262.00 will also come due, for a total delinquency of \$10,986.00. *Id.*

In addition, Trustee has reviewed the schedules and determined that this case has a liquidation value of \$28,014.00 after trustee compensation if the case were converted to chapter 7. Doc. #19. This amount is comprised of the value of Debtors' jewelry and solar panels.

In response, Debtors declare that Trustee received payments totaling \$3,980.00 on April 4, 2023. Doc. #27. Debtors hope to pay off the remaining balance of \$7,006.00 prior to the hearing on this motion. *Id.*

Debtors also indicate joint debtor Jason Ryan Muniz is a correctional officer who recently moved from a Level 1 low security penitentiary to a Level 4 maximum security penitentiary and is currently being treated for health issues arising from workplace stress. As a result, Debtors fell behind on plan payments due to reduced work hours. *Id.*

Lastly, Debtors claim that a conversion to chapter 7 will not benefit general unsecured creditors because there is no equity in the solar panels. *Id.* Debtors inadvertently listed \$0.00 as the claim amount for the solar panels and have amended their schedules accordingly to show that they actually owe \$30,360.00 to the secured creditor.

The court agrees that Debtors do not have any equity in the solar panels based on their declaration and amended schedules. Docs. #25; #27. Thus, this case has a liquidation value of \$1,600.00, which consists solely of the non-exempt equity in Debtor's jewelry and the liquidation value of this case is *de minimis*. Therefore, dismissal, rather than conversion, best serves the interests of creditors and the estate.

This matter will be called and proceed as scheduled to inquire whether Debtors are current under the plan. If so, this motion will be DENIED WITHOUT PREJUDICE. Otherwise, this motion may be GRANTED, and the case dismissed.

10:00 AM

1. [23-10135](#)-B-7 **IN RE: SCHFUNCELL WHITLEY**
[JMV-1](#)

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
3-11-2023 [[30](#)]

OPPOSITION

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court entered an order dismissing this case on May 1, 2023.
Doc. #40. Accordingly, the chapter 7 trustee's motion to dismiss will
be DENIED AS MOOT.

2. [23-10659](#)-B-7 **IN RE: JESSICA COOPER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-14-2023 [[13](#)]

JOHN-PAUL SERRAO/ATTY. FOR DBT.

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 \$338.00 filing fee was paid on April 20,
2023. Accordingly, this order to show cause will be VACATED.

3. [22-11771](#)-B-7 **IN RE: JOSE/ELIZABETH GALINDO**
[RSW-2](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
3-14-2023 [\[27\]](#)

ELIZABETH GALINDO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Jose Ernesto Galindo and Elizabeth Galindo (collectively "Debtors") seek to avoid a lien in favor of Wells Fargo Bank, National Association ("Creditor") in the sum of \$13,482.65 and encumbering residential real property located at 1104 Antonia Way, Bakersfield, CA 93304 ("Property").² Doc. #27.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re*

Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment lien was entered against joint debtor Jose Galindo in favor of Creditor in the amount of \$13,482.65 on April 16, 2019. *Ex. D*, Doc. #32. The abstract of judgment was issued on August 7, 2019 and recorded in Kern County on August 27, 2019. *Id.* That lien attached to Debtors' interest in Property. *Id.*; Doc. #29.

As of the petition date, Property had an approximate value of \$267,200.00. *Id.*; *Sched. A/B*, Doc. #1. Debtors claimed a homestead exemption in Property in the amount of \$313,207.00 pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C*, *id.*

Property was encumbered by a first deed of trust in favor of Flagstar Bank in the amount of \$110,516.00. *Sched. D*, *id.* Property is also encumbered by a judgment lien in favor of Cavalry Portfolio Services in the amount of \$2,755.00. *Sched. D*, *id.* *Schedule D* indicates that the debt was "Opened 11/18 Last Active 04/18." The motion and supporting declaration contain no information about this judgment lien, so its priority in relation to Creditor's lien is unclear.

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B).

However, this reverse order of priority rule is only applicable when there is equity available for otherwise-avoidable liens to attach. *Hanger*, 217 B.R. at 596 ("The 1994 amendment adopted the full avoidance approach and the formula given is simply a restatement of the *Brantz* formula. This formula is more favorable for debtors by allowing them the full benefit of the exemption and the benefit of any post-avoidance appreciation in the value of the property."), *citing In re Witkowski*, 176 B.R. 114, 115, 117-18 (Bankr. D. Mass. 1994), H.R. Rep. 103-834, 103rd Cong., 2nd Sess. 35-37 (Oct. 4, 1994); *cf. All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007) (specifying reverse priority rule and order of operations for the § 522(f) formula in the case of co-owned property with equity to which liens may attach).

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Hanger*, 217 B.R. at 596, *citing Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), *citing In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987)

(judicial liens was avoidable in its entirety where equity is less than exemption).

Here, there is no equity to support any judicial liens. Even if the Cavalry lien is excluded from the § 522(f)(2) calculation, Creditor's lien is avoidable because Debtors' exemption exceeds the value of the Property under § 522(f)(2):

Amount of judgment lien	\$13,482.65
All other unavoidable liens	+ \$110,516.00
Debtors' claimed exemption in Property	+ \$313,207.00
Sum	= \$437,205.65
Debtors' claimed value of interest absent liens	- \$267,200.00
Extent lien impairs exemption	= \$170,005.65

Meyer, 373 B.R. at 91; accord. *Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); cf. *Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property	\$267,200.00
Flagstar Bank deed of trust	- \$110,516.00
Homestead exemption	- \$313,207.00
Remaining equity for judicial liens	= (\$156,523.00)
Creditor's judicial lien	- \$13,482.65
Extent Debtors' exemption impaired	= (\$170,005.65)

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

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall state that Creditor's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.

This ruling does not in any way affect attachment of the judgment lien in favor of Cavalry Portfolio Services.

² Debtors complied with Fed. R. Bankr. P. 7004(h) and (i) by serving Creditor's CEO via certified mail on March 15, 2023. Doc. #33.

4. [22-11985](#)-B-7 **IN RE: JESUS ZERMENO**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-22-2023 [\[36\]](#)

AMERICREDIT FINANCIAL SERVICES, INC./MV
SHERYL ITH/ATTY. FOR MV.
DATE DISCHARGED: 4/10/2023

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

DISPOSITION: Granted in part and denied as moot in part.

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

Americredit Financial Services, Inc. dba GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2021 GMC Sierra 1500 ("Vehicle"). Doc. #36. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

Jesus Zermeno ("Debtor") and chapter 7 trustee Jeffrey M. Vetter ("Trustee") did not oppose.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. Debtor's discharge was entered on April 10, 2023. Doc. #46. Therefore, the automatic stay terminated with respect to Debtor on April 10, 2023. This motion will be DENIED AS MOOT IN PART as to Debtor's interest.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay with respect to the Trustee because Debtor has failed to make one pre-petition payment of \$1,086.68 and three post-petition payments totaling \$3,179.76 and late fees in the amount of \$203.03. Movant has produced evidence that Debtor owes \$4,469.47 to Movant. Doc. #39.

Accordingly, the motion will be GRANTED IN PART as to the Trustee's interest and DENIED AS MOOT IN PART as to Debtor's interest under § 362(c)(2)(C).

The 14-day stay of Rule (a)(3) will be ordered waived because the Vehicle is a depreciating asset.

11:00 AM

1. [22-10128](#)-B-7 **IN RE: SEQUOYAH KIDWELL**
[23-1009](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-6-2023 [\[1\]](#)

KIDWELL V. ALLISON ET AL
SEQUOYAH-DESERTHAWK KIDWELL/PL.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Dropped.

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

On April 25, 2023, Sequoyah-Deserthawk Kidwell ("Plaintiff") filed a *Motion for Withdrawl Adversary Proceeding and Request Court to Transfer to Proper Court [sic]*. Doc. #41. Plaintiff seeks a hearing on May 3, 2023 at 11:00 a.m. to have this proceeding withdrawn and transferred to the appropriate court. However, Plaintiff failed to request an order shortening time to set this motion for hearing and failed to serve or notify all parties in interest. Doc. #42.

This status conference will be called to inquire whether Plaintiff withdraws his complaint. If not, the court intends to dismiss this adversary proceeding without prejudice and without leave to amend for lack of subject matter jurisdiction in matter #2 below. CAE-2. Accordingly, this status conference will be dropped and taken off calendar, and the adversary proceeding may be administratively closed when appropriate.

2. [22-10128](#)-B-7 **IN RE: SEQUOYAH KIDWELL**
[23-1009](#) [CAE-2](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY
PROCEEDING
3-14-2023 [\[24\]](#)

KIDWELL V. ALLISON ET AL

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Adversary proceeding dismissed without prejudice
and without leave to amend.

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

The court issued this *Order to Show Cause Regarding Dismissal of Adversary Proceeding for Lack of Subject Matter Jurisdiction* ("OSC") on March 14, 2023. Doc. #24.

Debtor Sequoyah Deserthawk Kidwell ("Plaintiff") was directed to file a written response to the OSC not later than April 19, 2023. *Id.* Rather than filing a response, Plaintiff filed a motion to withdraw the adversary complaint. Doc. #41.

This matter will be called and proceed as scheduled because Plaintiff is *pro se*. The adversary proceeding will be dismissed without prejudice and without leave to amend.

This OSC was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the Plaintiff 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 OSC. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, Plaintiff's default is entered.

The court issued this order to show cause because it appears, after careful consideration of the Complaint, this bankruptcy court lacks subject matter jurisdiction over this adversary proceeding under relevant Ninth Circuit authority. Consequently, this adversary proceeding must be dismissed under Fed. R. Civ. P. ("Civ. Rule") 12(h)(3), *as incorporated in adversary proceedings by Fed. R. Bankr. P. ("Rule") 7012(b)*.

BACKGROUND

In 2002, Plaintiff³ was found guilty by a jury and convicted of one count of first-degree murder [Cal. Pen. Code §§ 187(a), 190.2(a)(17)(A)]. *Ex. A to Compl.*, Doc. #1. Plaintiff was sentenced to a prison term of life without the possibility of parole. *Id.*

Plaintiff asserts the indictment leading to his subsequent conviction in Riverside County Superior Court is an "Executory Contract" because it lists two parties and bears a case or registration number. Compl., *id.* First, since the indictment was formed without his knowledge or consent, Plaintiff argues it is an illegal contract that cannot be enforced. *Id.* Second, the names of the parties to the purported contract—Plaintiff and "THE PEOPLE OF THE STATE OF CALIFORNIA"—are spelled with capital letters, or "ALL-CAPS", and are not registered with the Secretary of State as corporations, so Plaintiff says they are not authorized to conduct business. *Id.* Plaintiff further contends the indictment unlawfully changed his name without his consent because the capitalization is different from his birth certificate. *Id.* Plaintiff received a chapter 7 discharge under 11 U.S.C. § 727 on May 3, 2022 and believes the scope of the discharge includes his criminal indictment, conviction, and sentencing. *Id.* It does not.

On this basis, Plaintiff prays this court order: (1) recall of his sentence, conviction, and all orders arising from the "illegal contract" as void; (2) recall of Plaintiff's "ENTIRE criminal convictions and ENTIRE records, as logically all such actions were also based on illegally formed contracts"; (3) eradication of all records, debts, and created indemnities from all illegal contracts; (4) "ALL proceeds made from the sale of the [S]urety Bond(s) and other GSA bonds created from the illegally formed contract be returned to [Plaintiff] as he is the source of these funds"; (5) the U.S. Marshals Service to retrieve Plaintiff from the California Correctional Institution and return him to his place of residence; and (6) "ALL Mutual Bond(s)/Funds be removed from the open market and proceeds from these Bond(s) or Instrument(s) be returned to [Plaintiff] as they belong to the source ([Plaintiff])." *Id.* at 14 (emphasis in original).

DISCUSSION

Though 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. Cal. Franchise Tax Bd. (In re Wilshire Courtyard)*, 729 F.3d 1279, 1284 (9th Cir. 2013).

This court does not have subject matter jurisdiction over Plaintiff's claims because federal bankruptcy courts have no jurisdiction to invalidate the results of state criminal proceedings. *In re Gruntz*, 202 F.3d 1074, 1084 (9th Cir. 2000); *In re Bonilla*, No. 19-403, 2019 Bankr. LEXIS 2566 at **2-3 (N.D. Cal. Aug. 16, 2019). "[W]hen a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is

entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). "Although the writ of habeas corpus has common law roots and is protected in the Constitution, the power to award the writ by any of the courts of the United States must be given by written law – a statute." *In re Luckett*, 612 B.R. 408, 411 (Bankr. D.N.M. 2020).

Plaintiff's first two claims for recall of his criminal sentence and conviction seek to challenge his physical imprisonment, so a writ of habeas corpus is required. The power to consider a writ of habeas corpus is provided in 28 U.S.C. §§ 2241(a) and 2254(a) to any justice of the Supreme Court, the district courts, and any circuit judge in their respective jurisdictions. Federal bankruptcy courts are not federal district courts; rather, they "constitute a unit of the district court." 28 U.S.C. § 151. Bankruptcy courts have jurisdiction over bankruptcy matters by reference from the district court. 28 U.S.C. §§ 157(a), 1334. The limited authority of bankruptcy judges does not include the power to consider writs of habeas corpus, so this court lacks jurisdiction over Plaintiff's claims for release from prison.

Plaintiff's remaining claims for ordering (3) eradication of his criminal records, debts, and indemnities resulting from his conviction, (4) return of proceeds from the sale of bonds created from his conviction, (5) the U.S. Marshals Service to return Plaintiff to his place of residence, and (6) the removal of mutual bonds or funds associated with his criminal case from the open market and return of proceeds to the Plaintiff, are derivative of his request for release from prison. These claims necessarily depend on Plaintiff successfully challenging the fact or duration of his confinement, and therefore fall within the scope of habeas corpus. *Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (en banc). Accordingly, this court lacks subject matter jurisdiction to hear Plaintiff's Complaint in this adversary proceeding.

Additionally, neither Plaintiff's criminal conviction nor his indictment are an "illegal contract." Under California law, an indictment is not a contract; rather, it is an accusatory pleading in a criminal action. PC § 691(c). An indictment contains the allegations of a grand jury. *Guillory v. Superior Court*, 31 Cal. 4th 168, 173 (2003), citing *People v. Superior Court (Gevorgyan)*, 91 Cal. App. 4th 602, 611-612 (2001). After an indictment is presented to the superior court, it becomes the accusatory pleading of the prosecutor and initiates a criminal action, which is a proceeding by which a party charged with a public offense is accused and brought to trial and punishment. *Id.*; PC § 683. A conviction for a public offense arises upon a guilty verdict from a jury that is accepted and recorded by a court of competent jurisdiction, or by finding of the court if a jury trial has been waived, or by a plea of guilty. PC § 689.

To state a contract claim, a plaintiff must necessarily plead that a contract was formed, which required details of the terms of its formation, including mutual assent consisting of an offer and acceptance. *Netbula LLC v. BindView Dev. Corp.*, 516 F. Supp. 2d 1137, 1155 (N.D. Cal. 2007) (mutual assent accomplished when a specific offer is communicated to an offeree and acceptance is communicated to the offeror).

This matter will be called as scheduled. Pursuant to the OSC, the court intends to DISMISS THE ADVERSARY PROCEEDING WITHOUT PREJUDICE and WITHOUT LEAVE TO AMEND for lack of subject matter jurisdiction. Since the court has no subject matter jurisdiction to adjudicate Plaintiff's confinement, the court finds that any amendment to the complaint cannot cure the legal defects. *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016).

³ Plaintiff was formerly known as Jason Scott Harper.

3. [22-10128](#)-B-7 **IN RE: SEQUOYAH KIDWELL**
[23-1009](#) [CAG-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
3-21-2023 [\[33\]](#)

KIDWELL V. ALLISON ET AL
LUCAS HENNES/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

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

The court intends to dismiss this adversary proceeding without prejudice and without leave to amend for lack of subject matter jurisdiction in matter #2 above. CAE-2. Accordingly, this motion to dismiss will be DENIED AS MOOT.

4. [22-11350](#)-B-7 **IN RE: RAYMOND PEYTON (C)**
[23-1003](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
1-23-2023 [7]

PEYTON V. ALLISON ET AL
RAYMOND-EUGENE PEYTON/PL.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Dropped.

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

The court intends to dismiss this adversary proceeding without
prejudice and without leave to amend for lack of subject matter
jurisdiction in matter #5 below. CAE-2. Accordingly, the status
conference will be dropped and taken off calendar. This adversary
proceeding may be administratively closed when appropriate.

5. [22-11350](#)-B-7 **IN RE: RAYMOND PEYTON (C)**
[23-1003](#) [CAE-2](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY
PROCEEDING
3-14-2023 [39]

PEYTON V. ALLISON ET AL
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Adversary proceeding dismissed without prejudice
and without leave to amend.

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

The court issued this *Order to Show Cause Regarding Dismissal of
Adversary Proceeding for Lack of Subject Matter Jurisdiction* ("OSC")
on March 14, 2023. Doc. #39.

Debtor Raymond-Eugene Peyton ("Plaintiff") was directed to file a
written response to the OSC not later than April 19, 2023. *Id.*
Plaintiff timely responded to the OSC on March 27, 2023. Resp.,
Doc. #56.

This matter will be called and proceed as scheduled because Plaintiff is *pro se*. The adversary proceeding will be dismissed without prejudice and without leave to amend.

This OSC was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1).

The court issued this order to show cause because it appears, after careful consideration of the Complaint, this bankruptcy court lacks subject matter jurisdiction over this adversary proceeding under relevant Ninth Circuit authority. Consequently, this adversary proceeding must be dismissed under Fed. R. Civ. P. ("Civ. Rule") 12(h)(3), *as incorporated in adversary proceedings by Fed. R. Bankr. P. ("Rule") 7012(b)*.

BACKGROUND

In 2007, Plaintiff was found guilty by a jury and convicted of three counts of penetration by force, violence, duress, menace, or fear [Cal. Pen. Code ("PC") § 269(a)(5)], and one count of aggravated sexual assault of a minor by force [PC § 269(a)(4)]. *Ex. A to Am. Compl., Doc. #7*. Plaintiff was sentenced to a 60-year prison term. *Id.*

Plaintiff asserts the indictment leading to his subsequent conviction in Riverside County Superior Court is an "Executory Contract" because it lists two parties and bears a case or registration number. *Am. Compl., id.* First, since the indictment was formed without his knowledge or consent, Plaintiff argues it is an illegal contract that cannot be enforced. *Id.* Second, the names of the parties to the purported contract—Plaintiff and "THE PEOPLE OF THE STATE OF CALIFORNIA"—are spelled with capital letters, or "ALL-CAPS", and are not registered with the Secretary of State as corporations, so Plaintiff says they are not authorized to conduct business. *Id.* Plaintiff further contends the indictment unlawfully changed his name without his consent because the capitalization is different from his birth certificate. *Id.* Plaintiff received a chapter 7 discharge under 11 U.S.C. § 727 on November 28, 2022 and believes the scope of the discharge includes his criminal indictment, conviction, and sentencing. *Id.* It does not.

On this basis, Plaintiff prays this court order: (1) recall of his sentence, conviction, and all orders arising from the "illegal contract" as null and void; (2) recall of Plaintiff's "ENTIRE criminal conviction and ALL associated records as logically, all such actions were also based upon an illegally formed contract"; (3) eradication of all records, debts, and created indemnities from the illegally formed contract; (4) "ALL proceeds made from the sale of the Surety Bond(s) and other GSA bonds created from the illegally formed contract be returned to [Plaintiff] as he is the source of said funds"; (5) the U.S. Marshals Service to retrieve Plaintiff from the California Correctional Institution in Tehachapi, California and "return his

corpus as well as all of his real and personal property to his place of residence"; and (6) "all mutual bond(s)/funds associated with [Plaintiff]'s criminal case #: RIF129302, be removed from the open market and proceeds from these bonds returned to [Plaintiff] as they rightfully belong to him as the source of the same." *Id.* at 9 (emphasis in original).

DISCUSSION

Though 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. Civ. Rule 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. Cal. Franchise Tax Bd. (In re Wilshire Courtyard)*, 729 F.3d 1279, 1284 (9th Cir. 2013).

Plaintiff's response addresses this OSC and the defendants' motion to dismiss in matter #6 below. Resp., Doc. #56.

First, Plaintiff contends that the abstract of judgment issued in connection with his criminal judgment is materially deficient under Cal. Code Civ. Proc. ("CCP") § 674 because it lacks five of the eight legislatively mandated requirements. *Id.* at 2-3, 6-9, citing *In re Myre*, Nos. 20-25072-E-13, JHH-1, 2021 Bankr. LEXIS 1031 (Bankr. E.D. Cal. Apr. 15, 2021). On this basis, Plaintiff contends the abstract is an "illegal contract" as defined Cal. Civ. Code § 1608, so no lien was ever issued. As evidence of the deficiency, Plaintiff performed a UCC 11 search for all liens in an attempt to locate the bonds from his conviction, but such search was returned with no liens of record. *Ibid.* Plaintiff conflates two distinct areas of law. A UCC search is not going to reveal an individual's criminal case records because a UCC search is not searching criminal record databases. Similarly, a business search from the California Secretary of State is not going to reveal the Plaintiff, the People of the State of California, or the Riverside County District Attorney because none of these entities are businesses.

Plaintiff supports his argument with citations to multiple inapplicable cases. *Myre*, Nos. 20-25072-E-13, JHH-1, 2021 LEXIS 1031 at *20 (no lien created because civil abstract of judgment was materially deficient under CCP § 674); *Keele v. Reich*, 169 Cal. App. 3d 1129, 215 Cal. Rptr. 756 (1985) (civil abstract of judgment was void because it did not comply with CCP § 674); *Ellrott v. Bliss*, 147 Cal. App. 3d 901, 195 Cal. Rptr. 446 (1983) (same); *Alcove Inv., Inc. v. Conceicao (In re Conceicao)*, 331 B.R. 885 (B.A.P. 9th Cir. 2005) (same); *Sangher v. Ahn*, BAP NC-16-1421-BJUF, 2017 WL 5017398 (B.A.P. 9th Cir. Nov. 2, 2017) (noting that a lower court denied as moot a motion to avoid a civil judgment lien under 11 U.S.C. § 522(f) because

the lien did not contain certain information required under CCP § 674(a), and the court cannot retroactively create a lien), *aff'd*, 794 F. App'x 661 (9th Cir. 2020); *Kimmel v. Goland*, 51 Cal. 3d 202, 793 P.2d 524 (1990) (analyzing the "plain meaning" of a statute to decipher legislative intent with respect to the litigation privilege of Cal. Civ. Code § 47); *Sasson v. Sokoloff (In re Sasson)*, 429 F.3d 864 (9th Cir. 2005) (preexisting state court civil judgment does not have preclusive effect on bankruptcy court's determination of dischargeability); *In re Coy*, 552 B.R. 199 (Bankr. C.D. Cal. 2016) (civil abstract of judgment avoidable under § 522(f) because it impaired the debtor's exemption in real property); *Longview Int'l. Inc. v. Stirling*, 35 Cal. App. 5th 985, 988-89, 247 Cal. Rptr. 3d 793 (Cal. Rptr. App. 2019) (although civil abstract of judgment is void because creditor corporation was suspended, it was retroactively validated upon reinstatement).

The cases cited by Plaintiff all involved **civil** judgment liens using an *Abstract of Judgment-Civil and Small Claims* form for civil cases under CCP §§ 488.480, 674, and 700.190. The form used in Plaintiff's criminal case was a criminal judgment on an *Abstract of Judgment-Prison Commitment-Indeterminate* form under PC §§ 1213 and 1213.5. None of Plaintiff's cases involved a criminal abstract of judgment for a prison commitment. Therefore, none of these cases are applicable here.

Next, Plaintiff argues the trial court that convicted him was not a valid court because all crime is commercial, so all criminal courts are actually commercial in nature, dealing in commerce and the settlement of contracts under contract and admiralty law outside of the protections of the U.S. Constitution. Resp. at 3, Doc. #56.

Although Plaintiff's characterization of criminal courts as "commercial" does not make sense, Plaintiff is incorrect that the Riverside County Superior Court did not have jurisdiction to indict, convict, and sentence him. Under the "Supremacy Clause" of the United States Constitution, the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land[.]" U.S. CONST. art. VI, cl. 2. Thus, the Constitution, and all statutes and treaties lawfully created under the Constitution, are binding law in the United States.

The "Admissions Clause" affords Congress the power to admit new States into the Union. U.S. CONST. art. IV, § 3. The California Admission Act was signed in September of 1850 and California was admitted as the 31st State to the Union. 9 Stat. 452, 31 Cong. Ch. 50 § 3 (Sept. 9, 1850). In anticipation for admission, the original Constitution of the State of California was adopted at a constitutional convention, ratified, and went into effect on December 20, 1849. Myra K. Saunders, *California Legal History: The California Constitution of 1849*, 90 Law Libr. J. 447, 458 (1998); 7 Witkin Sum. Cal. Law Const. Law § 79. Thirty years later, a new Constitution was adopted at a second constitutional convention in Sacramento, California, which was

ratified and went into effect completely on January 1, 1880. *Id.* The current version of this document confers original jurisdiction to superior courts and their judges in habeas corpus proceedings, proceedings for extraordinary relief in the nature of mandamus, certiorari, prohibition, and "in all other cases." Cal. Const. art. VI, § 10. This means that the Riverside County Superior Court is a court of general jurisdiction with original jurisdiction over all civil and criminal matters, including the criminal matter in which Plaintiff was indicted and convicted of multiple felonies.

Plaintiff also claims he unwittingly accepted an offer to be indicted by his criminal prosecutor, which makes the indictment a contract. Resp. at 3-5, Doc. #56. However, Plaintiff was not ever "informed that he was being offered the chance to become 'surety'/'collateral' for the ens legis 'Debtor' by contracting with the Admiralty Court/Military Tribunal via his jurisdistic 'person' serving as a 'transmitting utility' to perpetrate the Fraud." *Ibid.* Additionally, Plaintiff incorrectly believes this court "stipulated to Plaintiff's contention that the bonds emanating from the Fraudulent Executory Contract of the alleged criminal Court are thereby 'unenforceable.'" *Ibid.* Citing the "fruit of the poisonous tree" doctrine, Plaintiff insists his "illegal contract" indictment must be void. As evidence, Plaintiff handwrote on his criminal abstract of judgment that he accepted the indictment "for value," and that the "instrument" has a value of \$25 million. See, *Ex. A* to Resp., *id.*

There are multiple problems with this argument. First, neither Plaintiff's criminal conviction nor his indictment are an "illegal contract." Under California law, an indictment is not a contract; it is an accusatory pleading in a criminal action. PC § 691(c). An indictment contains the allegations of a grand jury. *Guillory v. Superior Court*, 31 Cal. 4th 168, 173 (2003), citing *People v. Superior Court (Gevorgyan)*, 91 Cal. App. 4th 602, 611-612 (2001); PC § 737. After an indictment is presented to the superior court, it becomes the accusatory pleading of the prosecutor and initiates a criminal action, which is a proceeding by which a party charged with a public offense is accused and brought to trial and punishment. *Id.*; PC § 683. A conviction for a public offense arises upon a guilty verdict from a jury that is accepted and recorded by a court of competent jurisdiction, or by finding of the court if a jury trial has been waived, or by a plea of guilty. PC § 689. Plaintiff's claim that he received an "offer" to be indicted that he "accepted" makes no sense. A grand jury issued an indictment alleging that Plaintiff committed crimes. A jury agreed and lawfully convicted Plaintiff of those crimes. He was sentenced and incarcerated accordingly. The record does not support Plaintiff's contention that he was presented with an offer to be indicted, he accepted the offer, and a contract was formed. See also, *Netbula LLC v. BindView Dev. Corp.*, 516 F. Supp. 2d 1137, 1155 (N.D. Cal. 2007) (mutual assent accomplished when a specific offer is communicated to an offeree and acceptance is communicated to the offeror).

Second, Plaintiff cannot simply write legal-sounding words in the margin of a criminal abstract of judgment to create a contract. Claiming such purported "contract" is valued at \$25 million dollars does not make it so. Plaintiff's invocations of the UCC do not constitute a contract with the government and cannot be used to provide a basis for challenging incarceration. *Carter v. Wands*, 431 F. App'x 628, 629 (10th Cir. 2011) (mem.) ("Nor does the UCC provide a basis to challenge the conditions of his imprisonment.")

Third, Plaintiff's claim that he became surety or collateral by contracting with the Admiralty Court/Military Tribunal does not make sense. This appears to be a reference to the "Redemption Scheme," a conspiracy theory advanced by Sovereign Citizens, an anti-government movement that erroneously believes that when the U.S. Government left the gold standard in 1933, it pledged the future earnings of its citizens to support the value of its currency. Caesar Kalinowski IV, *A Legal Response to the Sovereign Citizen Movement*, 80 Mont. L. Rev. 153, 164 (2019). Through "redemption," Sovereign Citizens believe that they can divest themselves from an "artificial person" and make use of funds taken out on their behalf by the U.S. Department of the Treasury. *Id.* at 165-66. However, this scheme has no legal basis. *Id.* at 184. Further, creation and presentment of fictitious instruments may be a violation of federal law subject to criminal prosecution under 18 U.S.C. § 514.

Plaintiff also argues that the use of all capital letters in his name equates him to a corporation in the California Style Manual. Resp. at 6, Doc. #56. However, capitalization is stylistic and legally irrelevant to establishing substantive rights or proving a hidden meaning in a legal document. "Captioning court documents with all capital letters complies with [Civ. Rule] 10(a)" and "[t]he use of all capital letters in the caption of court documents is a typographical convention without legal significance." *Adams v. City of Marshall*, No. 4:05-CV-62, 2005 WL 2739029, at *1 (W.D. Mich. Oct. 24, 2005), quoting *United States v. Heijnen*, 375 F. Supp. 2d 1229, 1231 (D. N.M. 2005).

Plaintiff further advances thirteen "other arguments" in support of his claim that he should be released from prison. Resp. at 9-11, Doc. #56. None of these arguments are helpful because this court does not have authority to release Plaintiff from prison.

This court does not have subject matter jurisdiction over Plaintiff's claims because federal bankruptcy courts have no jurisdiction to invalidate the results of state criminal proceedings. *Gruntz v. Cty. of L.A. (In re Gruntz)*, 202 F.3d 1074, 1084 (9th Cir. 2000); *In re Bonilla*, No. 19-403, 2019 Bankr. LEXIS 2566 at **2-3 (N.D. Cal. Aug. 16, 2019). "[W]hen a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). "Although the writ of habeas corpus has common law roots and is

protected in the Constitution, the power to award the writ by any of the courts of the United States must be given by written law – a statute.” *In re Lockett*, 612 B.R. 408, 411 (Bankr. D.N.M. 2020).

Plaintiff’s first two claims for recall of his criminal sentence and conviction seek to challenge his physical imprisonment, so a writ of habeas corpus is required. The power to consider a writ of habeas corpus is provided in 28 U.S.C. §§ 2241(a) and 2254(a) to any justice of the Supreme Court, the district courts, and any circuit judge in their respective jurisdictions. Federal bankruptcy courts are not federal district courts; rather, they “constitute a unit of the district court.” 28 U.S.C. § 151. Bankruptcy courts have jurisdiction over bankruptcy matters by reference from the district court. 28 U.S.C. §§ 157(a), 1334. The limited authority of bankruptcy judges does not include the power to consider writs of habeas corpus, so this court lacks jurisdiction over Plaintiff’s claims for release from prison.

Plaintiff’s remaining claims for ordering (3) eradication of his criminal records, debts, and indemnities resulting from his conviction, (4) return of proceeds from the sale of bonds created from his conviction, (5) the U.S. Marshals Service to return Plaintiff to his place of residence, and (6) the removal of mutual bonds or funds associated with his criminal case from the open market and return of proceeds to the Plaintiff, are derivative of his request for release from prison. These claims necessarily depend on Plaintiff successfully challenging the fact or duration of his confinement, and therefore fall within the scope of habeas corpus. *Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (en banc). Accordingly, this court lacks subject matter jurisdiction to hear Plaintiff’s Complaint in this adversary proceeding.

This matter will be called as scheduled. Pursuant to the OSC, the court intends to DISMISS THE ADVERSARY PROCEEDING WITHOUT PREJUDICE and WITHOUT LEAVE TO AMEND for lack of subject matter jurisdiction. Since the court has no subject matter jurisdiction to adjudicate Plaintiff’s confinement, the court finds that any amendment to the complaint cannot cure the legal defects. *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016).

6. [22-11350](#)-B-7 **IN RE: RAYMOND PEYTON (C)**
[23-1003](#) [CAG-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
3-13-2023 [[36](#)]

PEYTON V. ALLISON ET AL
LUCAS HENNES/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

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

The court intends to dismiss this adversary proceeding without
prejudice and without leave to amend for lack of subject matter
jurisdiction in matter #5 above. CAE-2. Accordingly, this motion to
dismiss will be DENIED AS MOOT.

7. [22-10352](#)-B-7 **IN RE: BRITTNEE STARLING**
[23-1014](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
2-10-2023 [[1](#)]

ALTAONE FEDERAL CREDIT UNION V. STARLING
ALANA ANAYA/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

8. [23-10072](#)-B-7 **IN RE: LARRY COOPER**
[23-1013](#) [AGO-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
3-28-2023 [[23](#)]

COOPER, JR V. MACOMBER ET AL
ROB BONTA/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The plaintiff withdrew the adversary complaint on April 19, 2023, which will be deemed to be a voluntary dismissal under Fed. R. Civ. P. 41(a)(1)(A)(i), *as incorporated by* Fed. R. Bankr. P. 7041. Doc. #31. Accordingly, this motion to dismiss will be DENIED WITHOUT PREJUDICE AS MOOT.

9. [23-10072](#)-B-7 **IN RE: LARRY COOPER**
[23-1013](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
2-9-2023 [[1](#)]

COOPER, JR V. MACOMBER ET AL
LARRY COOPER/PL.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

The plaintiff withdrew the adversary complaint on April 19, 2023, which will be deemed to be a voluntary dismissal under Fed. R. Civ. P. 41(a)(1)(A)(i), *as incorporated by* Fed. R. Bankr. P. 7041. Doc. #31. Accordingly, the status conference will be dropped and taken off calendar. This adversary proceeding may be administratively closed when appropriate.

10. [23-10072](#)-B-7 **IN RE: LARRY COOPER**
[23-1013](#) [CAE-2](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY
PROCEEDING
3-14-2023 [[20](#)]

COOPER, JR V. MACOMBER ET AL

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

DISPOSITION: Vacated as moot.

ORDER: The court will issue an order.

The plaintiff withdrew the adversary complaint on April 19, 2023, which will be deemed to be a voluntary dismissal under Fed. R. Civ. P. 41(a)(1)(A)(i), *as incorporated by* Fed. R. Bankr. P. 7041. Doc. #31. Accordingly, this order to show cause will be VACATED AS MOOT and taken off calendar.

11. [23-10072](#)-B-7 **IN RE: LARRY COOPER**
[23-1013](#) [JHC-1](#)

MOTION TO DISMISS ARLENE BARRERA
3-29-2023 [\[26\]](#)

COOPER, JR V. MACOMBER ET AL
JACQUELYN CHOI/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The plaintiff withdrew the adversary complaint on April 19, 2023, which will be deemed to be a voluntary dismissal under Fed. R. Civ. P. 41(a)(1)(A)(i), *as incorporated by* Fed. R. Bankr. P. 7041. Doc. #31. Accordingly, this motion to dismiss will be DENIED WITHOUT PREJUDICE AS MOOT.