



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, May 25, 2023
Department A – Courtroom #11
Fresno, California**

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [23-10703](#)-A-13 **IN RE: CESAR BANDA AND SILVIA PENA**
[MHM-1](#)

MOTION TO DISMISS CASE
4-26-2023 [[42](#)]

MICHAEL MEYER/MV
ZISHAN LOKHANDWALA/ATTY. FOR DBT.
MICHAEL MEYER/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the 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). 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 debtors are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1) because the debtors failed to comply with the pre-petition credit counseling requirement imposed by 11 U.S.C. § 109(h)(1). Doc. #42. The debtors did not file written opposition.

Under 11 U.S.C. § 109(h), an individual may not be a debtor unless the debtor received credit counseling within the 180-day period ending on the petition date. 11 U.S.C. § 109(h)(1). Cesar Pena Banda and Silvia Pena (collectively, "Debtors") filed for relief under chapter 13 of the Bankruptcy Code on April 6, 2023. Doc. #1. Debtors have not filed certificates of pre-petition credit counseling.

The Bankruptcy Code allows a debtor to request a waiver of the § 109(h)(1) requirement to receive credit counseling pre-petition based on exigent circumstances. 11 U.S.C. § 109(h)(3)(A). However, Debtors have not requested a waiver of the § 109(h)(1) requirements post-petition within the time limits provided by 11 U.S.C. § 109(h)(3)(B). Because Debtors did not receive credit counseling within the 180-days prior to filing the bankruptcy petition and have not received a waiver of that requirement, Debtors may not be debtors pursuant to § 109(h).

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) because Debtors did not obtain pre-petition credit counseling as required by § 109(h)(1) and did not request a waiver of the § 109(h)(1) requirement post-petition within the time period provided by 11 U.S.C. § 109(h)(3)(B).

Because Debtors are not eligible to be debtors, dismissal rather than conversion is appropriate.

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

2. [22-12130](#)-A-13 **IN RE: CECILIA QUINONEZ**
[PBB-1](#)

MOTION TO CONFIRM PLAN
4-17-2023 [\[40\]](#)

CECILIA QUINONEZ/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days’ notice as required by Local Rule of Practice (“LBR”) 3015-1(d)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

As an informative matter, the movant incorrectly completed Section 6 of the court’s mandatory Certificate of Service form. In Section 6, the declarant checked the appropriate boxes under Section 6B, which shows that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #47. Nevertheless, the declarant should have also checked box 6B.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
5-9-2023 [\[23\]](#)

SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

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

The debtor filed her chapter 13 plan ("Plan") on March 30, 2023. Doc. #14. Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the Plan on the grounds that: (1) the Plan impermissibly modifies the claim of secured creditor Maple Leaf Capital Company ("Creditor") as a Class 1 creditor with pre-petition mortgage arrears of \$30,000.00 and does not provide for the curing of the \$44,978.18 in pre-petition arrears as set forth in Creditor's filed proof of claim; and (2) the monthly Plan payments will be insufficient to fund the Plan once the arrears on Creditor's claim are provided for fully. Doc. #23. Trustee also objects to confirmation of the Plan because it appears that Creditor's claim matures during the term of the Plan and so should be listed in Class 2 instead of Class 1.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under section 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on May 5, 2023, asserting pre-petition arrears of \$44,978.18. Claim 5.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #14. The Plan fails to account for Creditor's pre-petition arrears as set forth in Creditor's Claim. Claim 5; Doc. #14.

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

4. [22-12053](#)-A-13 **IN RE: NICHOLAS/MISTY CARRILLO**
[PBB-3](#)

MOTION TO MODIFY PLAN
4-17-2023 [\[54\]](#)

MISTY CARRILLO/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

5. [22-12163](#)-A-13 **IN RE: TINA GARCIA**
[MHM-2](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
2-14-2023 [\[21\]](#)

SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection to confirmation was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice 9014-1(f)(2) and was continued from a prior hearing held on March 2, 2023. Order, Doc. #38. At that hearing, the court ordered the trustee to file and serve a supplemental brief not later than April 30, 2023 regarding whether the secured claim of the

debtor's non-filing spouse needs to be included in Class 2 of the plan. Order, Doc. #38. It was further ordered that the debtor may file and serve any response to the supplemental brief not later than May 4, 2023, and a reply to the debtor's response, if any, may be filed and served not later than May 11, 2023. Id. The trustee filed a supplemental brief on April 20, 2023. Doc. #51. While not timely, the debtor filed a written response to the supplemental brief on May 9, 2023. Doc. #55. No additional pleadings with respect to this objection to confirmation have been filed by the trustee. After thorough consideration of the pleadings, the court is inclined to sustain Trustee's objection.

Debtor Tina Louise Garcia ("Debtor") filed her Chapter 13 plan ("Plan") on January 4, 2023. Doc. #11. The chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the Plan on the grounds that: (1) Debtor has not scheduled all debts required to be scheduled pursuant to 11 U.S.C. 521(a), specifically a 2017 Ford F-250 ("Vehicle") that is a secured claim of Debtor's non-filing spouse; and (2) the Plan does not list the secured claim of Debtor's non-filing spouse held by secured creditor Bank of West ("Creditor") in Class 2 of the Plan. Doc. #21. Debtor acknowledges that the Vehicle is community property. Doc. #55. The secured debt held by Creditor against the Vehicle matures on August 26, 2024. Retail Installment Sales Contract, Ex. A, Doc. #53. The Plan is a 60-month plan and will complete after the maturity date of Creditor's loan.

All community property, including the Vehicle, became property of Debtor's bankruptcy estate when Debtor filed for bankruptcy on December 21, 2022. 11 U.S.C. § 541(a)(2); see In re Moreno, 622 B.R. 903, 906 (Bankr. C.D. Cal. 2020). Creditor has a lien on the Vehicle. See Ex. A, Doc. 53.

Trustee argues that Creditor has a claim against property of Debtor, and thus a claim against Debtor in bankruptcy, despite the loan being in the name of Debtor's non-filing spouse and irrespective of whether there is privity of contract between Debtor and Creditor. 11 U.S.C. § 102(2); In re Monroe, 282 B.R. 219 (Bankr. D. Ariz 2002); Gagan v. Gouyd, 73 Cal. App. 4th 835 (1999); Johnson v. Home State Bank, 501 U.S. 78 (1991). The court is not inclined to find that 11 U.S.C. § 102(2) applies to this matter because the Vehicle is property of Debtor's bankruptcy estate, not property of Debtor. Rather, the court finds that Creditor was a "creditor" with a "community claim" in Debtor's bankruptcy case at the time Debtor filed her bankruptcy case in 2022 by virtue of 11 U.S.C. §§ 101(10) and 101(7).

"The term 'community claim' means a claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case." 11 U.S.C. § 101(7). In California, this is particularly significant because California community property is exposed to claims against an individual spouse. Cal. Fam. Code § 910. Here, Creditor has a community claim in Debtor's bankruptcy case (even though Debtor has no personal liability to Creditor) because all community property in which both Debtor and her non-filing spouse have an interest, including the Vehicle, passed into Debtor's bankruptcy estate. 11 U.S.C. § 101(10)(C); Moreno, 622 B.R. at 910. Regardless of whether Creditor's interest was reflected in Debtor's schedules or there is privity of contract between Debtor and Creditor, the Vehicle, which is property of Debtor's bankruptcy estate, is liable for payment of Creditor's secured community claim and Creditor may assert a claim in Debtor's bankruptcy case. In re Andersen, Case No. 20-20978-E-7, 2020 WL 6325522, at *6 (Bankr. E.D. Cal. Oct. 28, 2020).

Pursuant to Section 3.08 of the Plan, Class 2 includes all secured claims that are modified by the Plan or that have matured or will mature before the Plan is completed. Plan, Doc. #11. Because the Vehicle, which is property of Debtor's bankruptcy estate, secures the claim of Creditor pursuant to 11 U.S.C. § 101(7) and Creditor's secured claim matures on August 26, 2024, which is before the Plan is completed, Creditor's secured claim should be treated in Class 2 of the Plan.

Accordingly, Trustee's objection will be SUSTAINED.

6. [22-12163](#)-A-13 **IN RE: TINA GARCIA**
[SL-1](#)

OBJECTION TO CLAIM OF CHICAGO TITLE INSURANCE COMPANY, CLAIM NUMBER 6
4-11-2023 [\[44\]](#)

TINA GARCIA/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

7. [22-10464](#)-A-13 **IN RE: BETTY MARTINEZ**
[BDB-1](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, WAIVE SECTION 1328
CERTIFICATE REQUIREMENT, CONTINUE CASE ADMINISTRATION, AS TO DEBTOR
5-4-2023 [\[20\]](#)

JODIE BIGGS/MV
BENNY BARCO/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.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Jodie Biggs ("Movant"), daughter of the deceased debtor Betty Martinez ("Debtor") in this chapter 13 case, requests the court name Movant as the successor to the deceased Debtor, permit the continued administration of this chapter 13 case, and waive the § 1328 certification requirements for Debtor. Doc. #20.

Upon the death of a debtor in chapter 13, Federal Rule of Bankruptcy Procedure 1016 provides that the case may proceed and be concluded in the same manner, so far as possible, as though the death had not occurred upon a showing that further administration is possible and in the best interest of the parties. Debtor died on March 6, 2023. Decl. of Jodie Biggs, Doc. #23. Debtor's chapter 13 plan was confirmed on May 18, 2022. Doc. #13. Movant intends to petition the court for a discharge prior to completion of Debtor's plan, which Movant understands Debtor would be eligible to receive. Biggs Decl., Doc. #23. The court is inclined to find that appointing Movant to be a representative to proceed with case administration is in the best interest of the parties and creditors.

With respect to a waiver of the certification requirements for entry of discharge under 11 U.S.C. § 1328 as to Debtor only, Movant provided evidence explaining Debtor did not meet the post-petition financial education requirements before she died.

Accordingly, Movant's application to be appointed as the successor to the Debtor and for the further administration of this bankruptcy case is GRANTED. Movant's motion to waive Debtor's § 1328 certification requirements is GRANTED.

8. [23-10482](#)-A-13 **IN RE: REYNALDO/BEATRIZ RODRIGUEZ**
[SL-1](#)

CONTINUED MOTION TO EXTEND AUTOMATIC STAY
3-17-2023 [8]

BEATRIZ RODRIGUEZ/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted with the condition that secured creditor has relief from stay to record its § 362(d)(4) order.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2). At the initial hearing held on April 6, 2023, the motion to extend automatic stay was continued to May 25, 2023, at 9:30 a.m. and the automatic stay was extended through May 25, 2023. Order, Doc. #20. The court ordered the objecting secured creditor to file and serve written opposition not later than May 4, 2023 and any reply to be filed and served not later than May 11, 2023. Order, Doc. #20.

Secured creditor MCLP Asset Company, Inc. ("Creditor") filed and served timely opposition on May 4, 2023. Doc. #29. The debtors filed and served a timely reply on May 11, 2023. Doc. #39. Based on Creditor's opposition and the debtors' reply, the court is inclined to grant the motion.

Debtors Reynaldo Rodriguez and Beatriz Rodriguez (together "Debtors") move the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). Creditor opposes. Doc. #29.

Debtors had a chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 22-12012 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on November 23, 2022 and dismissed on February 15, 2023. Decl. of Reynaldo Rodriguez, Doc. #10. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtors filed this case on March 13, 2023. Petition, Doc. #1. The automatic stay was set to terminate in the present case on April 12, 2023. At the prior hearing on this motion, the automatic stay was extended through May 25, 2023.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]" 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was not filed in good faith if (1) the debtor filed more than one prior case in the preceding year; (2) the debtor failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) the debtor has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted) vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019).

In this case, the presumption of bad faith arises. A review of the court's docket in the Prior Case disclosed a chapter 13 plan that was not confirmed. Case No. 22-12012, Doc. #14. On February 15, 2023, the chapter 13 trustee filed and set for hearing a motion to dismiss the Prior Case for unreasonable delay by Debtors that is prejudicial to creditors (the "Motion"). Case No. 22-12012, Doc. #65. Debtors did not oppose the Motion, and the court dismissed the Prior Case. Case No. 22-12012, Doc. ##35-38, 65-66. Debtors acknowledge that the Prior Case was dismissed for unreasonable delay by Debtors that was prejudicial to creditors because Debtors failed to: (a) appear at their scheduled 341 meeting of creditors; (b) provide required documents, tax return, payment advices, creditor counseling certificate and other documents to the chapter 13 trustee; and (c) file complete and accurate schedules and statements and a chapter 13 plan. Rodriguez Decl., Doc. #10.

In support of this motion to extend the automatic stay, Debtors declare that the reasons for the above-stated deficiencies in their Prior Case occurred because Debtors went to Consumer Defense Law Group to get help modifying their home mortgage after being scammed by a company called Home Matters USA where they paid Home Matters USA \$1,023.00 per month for at least 14 months for their services. Rodriguez Decl., Doc. #10. Debtors paid Consumer Defense Law Group

\$2,000.00 in November 2022 to modify their home mortgage and also were advised by Consumer Defense Law Group to file for bankruptcy due to a pending a foreclosure sale. Id. Consumer Defense Law Group communicated to Debtors that Consumer Defense Law Group did not get involved in bankruptcy matters and Debtors should file for bankruptcy on their own. Id. Consumer Defense Law Group provided Debtors with forms and paperwork, which Consumer Defense Law Group prepared for Debtors. Id. Debtors took the paperwork to the bankruptcy court in Fresno and filed for bankruptcy without an attorney, but Debtors did not know the process or procedure to properly complete their case. Id. Debtors state that because Debtors were unaware of how to complete their Prior Case properly, Debtors' Prior Case was eventually dismissed. Id.

Debtors state that they refiled for chapter 13 on March 13, 2023 and retained competent bankruptcy counsel, Scott Lyons, who has advised and instructed Debtors regarding their rights and responsibilities under the Bankruptcy Code. Rodriguez Decl., Doc. #10. Debtors state that Debtors have completed their credit counseling classes and have provided their certificates of completion to the court. Id. Further, Debtors filed their complete chapter 13 statements, schedules, and chapter 13 plan concurrently with their chapter 13 voluntary plan. Id. In addition, Debtors are receiving an increased contribution to their household from both their granddaughter who lives with them and pays them \$200.00 as well as from their son who also lives with them and pays them \$100.00. Id. Debtors filed a proposed plan on March 13, 2023. Doc. #3. Debtors' Schedules I and J filed in this case list monthly income of \$5,022.78 and expenses of \$1,841.42, resulting in monthly net income of \$3,181.36, of which Debtors propose to apply \$3,170.00 to plan payments in this case. Schedules I and J, Doc. #1; Rodriguez Decl., Doc. #10. Debtors are confident that a chapter 13 plan will be confirmed in this case and that Debtors have the income ability to maintain plan payments. Rodriguez Decl., Doc. #10.

Creditor opposes Debtors' motion on the grounds that the instant case was filed in bad faith. Opp., Doc. #29. Creditor highlights that there has been both a transfer of part ownership of the Property without the consent of Creditor, and multiple bankruptcy filings impacting the Property. Id. Specifically, there have been four bankruptcy cases filed in the past eight months impacting the Property - two by a grantee, and two by Debtors. Id. Further, this case was filed just ten days after entry of an order granting Creditor in rem relief as to the Property pursuant to § 362(d)(4) ("In Rem Order") in the Prior Bankruptcy Case. Case No. 22-12012, Doc. #73. Given the short time between the entry of the In Rem Order and the filing of this case, Creditor was unable to record the In Rem Order before the automatic stay was imposed by the filing of this case. Opp., Doc. #29. Creditor argues the unauthorized grant deed and multiple bankruptcy filings have prevented Creditor from lawfully exercising its state law remedies and have caused Creditor to incur significant legal expenses while Debtors enjoy use and possession of the Property. Id. Creditor requests that should the motion be granted that the order provide that Creditor may record the In Rem Order without violation of the automatic stay. Id.

In response to Creditor's opposition, Debtors state that they did not sign any grant deed giving any interest in the Property to either Christino Pineda or Rafael Garcia and do not know or have met these people. Decl. of Reynaldo Rodriguez in Reply to Opposition to Motion, Doc. #40. Further, Debtors do not know Santiago Holguin - the individual who signed the grant deed attached to Creditor's opposition - or give anyone permission or instructions to give any interest in the Property. Id. On April 6, 2023, Debtors went to Tulare County Recorder's Office and discovered that the grant deed attached to the Creditor's opposition was not filed at the Tulare County Records' Office. Id.

After reviewing the motion, Creditor's opposition and Debtors' reply, the court is inclined to GRANT Debtors' motion but lift the automatic stay to permit Creditor to record the In Rem Order. The issue presented by Debtors' motion is whether Debtors have rebutted by clear and convincing evidence the presumption that this bankruptcy case was filed not in good faith. That presumption arises from the court finding no substantial change in Debtors' financial or personal affairs, see 11 U.S.C. § 362(c)(3)(C)(i)(III). Creditor has not established that Debtors' circumstances have not changed since the Prior Case. The court is inclined to find that Debtors' circumstances have changed.

The court is inclined to find that Debtors' filing of the Prior Case without an attorney to advise Debtors of the process or procedure for ensuring their chapter 13 bankruptcy case was completed properly rebuts the presumption of bad faith that arose from Debtors' failure to: (a) appear at their scheduled 341 meeting of creditors; (b) provide required documents, tax return, payment advices, creditor counseling certificate and other documents to chapter 13 trustee; and (c) file complete and accurate schedules and statements and a chapter 13 plan, and that Debtors' petition commencing this case and being represented by counsel was filed in good faith. Moreover, the court recognizes that Debtors' increased monthly income represents a substantial change in financial affairs since the dismissal of the Prior Case.

Pursuant to 11 U.S.C. § 362(d)(4), if the In Rem Order is recorded, the In Rem Order is binding with respect to the real property described in that order in any other bankruptcy case for two years after the date of the entry of the In Rem Order, which was on March 3, 2023. Case No. 22-12012, Doc. #73. Thus, once recorded, the In Rem Order is effective only until March 2, 2025. On May 12, 2023, this court confirmed Debtors' chapter 13 plan filed in this case. Doc. #42. Debtors' confirmed plan has a 60-month term. Doc. #3. Thus, the limitation on the automatic stay as to the real property described in the In Rem Order will have lifted before Debtors fully complete their confirmed plan. Under the circumstances, the court finds that Debtors will not be harmed by lifting the automatic stay to permit Creditor to record the In Rem Order.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes only as to those parties named in Debtors' motion (Doc. #8), unless terminated by further order of the court. The court's order will provide that the automatic stay is lifted to permit Creditor to record the In Rem Order.

9. [23-10693](#)-A-13 **IN RE: DELILA RUCH**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-24-2023 [\[18\]](#)

MICHAEL MEYER/MV
ARETE KOSTOPOULOS/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed an amended Schedule C on April 28, 2023, amending the claimed exemption in the checking account.
Doc. #21.

11:00 AM

1. [22-10113](#)-A-7 **IN RE: ANTHONY LOPEZ**
[22-1013](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-6-2022 [[1](#)]

THE GOLDEN 1 CREDIT UNION V. LOPEZ
KAREL ROCHA/ATTY. FOR PL.

NO RULING.

2. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[20-1041](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [[1](#)]

SIHOTA ET AL V. SINGH ET AL
PETER SAUER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 15, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

On May 2, 2023, the plaintiff filed a motion for summary judgment in this adversary proceeding and set a hearing on that motion for June 15, 2023 at 11:00 a.m. Doc. ##158, 159. This pre-trial conference will be continued to June 15, 2023 at 11:00 a.m. to be heard in conjunction with the motion for summary judgment.

3. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[20-1041](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING
3-30-2023 [[149](#)]

SIHOTA ET AL V. SINGH ET AL

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

On March 30, 2023, this court issued an order to show cause ("OSC") why this adversary proceeding should not be dismissed for lack of prosecution for the failure of counsel for the plaintiffs to appear at the pre-trial conference held on March 30, 2023. Doc. #149.

On March 30, 2023, counsel for the plaintiffs filed a declaration explaining that the March 30, 2023 pre-trial conference date was calendared internally by counsel's office as the hearing on a motion for summary judgment also scheduled for March 30 and denied by final ruling prior to the hearing. Decl. of Lenden F. Webb, Doc. #151. As a result, the calendar entry for the pre-trial conference was inadvertently removed from counsel's internal calendar and counsel for the plaintiffs did not appear at the March 30, 2023 pre-trial conference. Webb Decl., Doc. #151.

Based on the explanation provided by counsel for the plaintiffs, the court finds that the failure of the plaintiffs' counsel to appear at the March 30, 2023 pre-trial conference to be inadvertent, and the court will not dismiss the adversary proceeding for lack of prosecution as set forth in the OSC. The OSC is vacated.

4. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[22-1023](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-5-2022 [\[1\]](#)

BANK OF AMERICA, N.A. V. MEYER ET AL
ELEANOR ROMAN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 15, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

On May 2, 2023, the plaintiff filed a motion for summary judgment in a related adversary proceeding and set a hearing on that motion for June 15, 2023 at 11:00 a.m. Adv. Proc. No. 20-1041, Doc. ##158, 159. The status conference in this adversary proceeding will be continued to June 15, 2023 at 11:00 a.m. to be heard in conjunction with the hearing on that motion for summary judgment.

5. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[20-1042](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [\[1\]](#)

SIHOTA ET AL V. SINGH ET AL
LENDEN WEBB/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 15, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

On May 2, 2023, the plaintiff filed a motion for summary judgment in this adversary proceeding and set a hearing on that motion for June 15, 2023 at

11:00 a.m. Doc. ##154, 155. This pre-trial conference will be continued to June 15, 2023 at 11:00 a.m. to be heard in conjunction with the motion for summary judgment.

6. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[20-1042](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING
3-30-2023 [[147](#)]

SIHOTA ET AL V. SINGH ET AL

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

On March 30, 2023, this court issued an order to show cause ("OSC") why this adversary proceeding should not be dismissed for lack of prosecution for the failure of counsel for the plaintiffs to appear at the pre-trial conference held on March 30, 2023. Doc. #147.

On March 30, 2023, counsel for the plaintiffs filed a declaration explaining that the March 30, 2023 pre-trial conference date was calendared internally by counsel's office as the hearing on a motion for summary judgment also scheduled for March 30 and denied by final ruling prior to the hearing. Decl. of Lenden F. Webb, Doc. #149. As a result, the calendar entry for the pre-trial conference was inadvertently removed from counsel's internal calendar and counsel for the plaintiffs did not appear at the March 30, 2023 pre-trial conference. Webb Decl., Doc. #149.

Based on the explanation provided by counsel for the plaintiffs, the court finds that the failure of the plaintiffs' counsel to appear at the March 30, 2023 pre-trial conference to be inadvertent, and the court will not dismiss the adversary proceeding for lack of prosecution as set forth in the OSC. The OSC is vacated.

7. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[22-1022](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-5-2022 [[1](#)]

BANK OF AMERICA, N.A. V. MEYER ET AL
ELEANOR ROMAN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 15, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

On May 2, 2023, the plaintiff filed a motion for summary judgment in a related adversary proceeding and set a hearing on that motion for June 15, 2023 at 11:00 a.m. Adv. Proc. No. 20-1042, Doc. ##154, 155. The status conference in this adversary proceeding will be continued to June 15, 2023 at 11:00 a.m. to be heard in conjunction with the hearing on that motion for summary judgment.

8. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[23-1021](#) [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
4-7-2023 [\[6\]](#)

NICOLE V. RAMIREZ ET AL

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

DISPOSITION: Continued to June 15, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

On May 9, 2023, the defendant City of Los Banos filed a motion to dismiss this adversary proceeding. Doc. #24. A hearing on this motion is set for June 15, 2023 at 11:00 a.m. Doc. #24. This status conference will be continued to June 15, 2023 at 11:00 a.m. to be heard in conjunction with the motion to dismiss.