



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

**HONORABLE RENÉ LASTRETO II
Department B – Courtroom #13
Fresno, California**

Hearing Date: Wednesday, May 31, 2023

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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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.

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.

9:30 AM

1. [19-10808](#)-B-13 **IN RE: MALER ATTAREB**
[MAZ-1](#)

MOTION TO MODIFY PLAN
4-21-2023 [[74](#)]

MALER ATTAREB/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Notwithstanding the chapter 13 trustee's withdrawn objection, this motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

The debtor filed a motion to extend automatic stay on March 8, 2019. Doc. #11. It was subsequently withdrawn on March 19, 2019. Doc. #17. The DCN for that motion was MAZ-1. The DCN for this motion is also MAZ-1, and therefore, it does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

For the above reason, this motion will be DENIED WITHOUT PREJUDICE.

2. [23-10712](#)-B-13 **IN RE: SARAH FLORES GARZA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-12-2023 [[25](#)]

\$79.00 FILING FEE PAID 5/17/23

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 installment fees now due have been paid. Accordingly, the order to show cause will be VACATED.

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.

3. [22-11023](#)-B-13 **IN RE: DULCE MARQUEZ**
[PLG-1](#)

MOTION TO MODIFY PLAN
4-20-2023 [[28](#)]

DULCE MARQUEZ/MV
RABIN POURNAZARIAN/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.

Dulce Michelle Marquez ("Debtor") seeks confirmation of the *First Modified Chapter 13 Plan* dated April 20, 2023. Doc. #28.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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.

The 60-month, 100% plan proposes that plan payments will be as received up through and including April 2023 (month 10), and then \$1,722.00 per month beginning May 2023 (month 11) to the end of the plan. Doc. #30. Debtor's *Amended Schedules I & J* indicate receipt of \$1,753.11 in monthly net income after payment of all expenses, including the four Class 4 claims. Doc. #26.

In contrast, Debtor's *Chapter 13 Plan* dated June 21, 2022, confirmed September 9, 2022, provides for 60 monthly payments of \$1,673.00 with a 100% dividend to allowed, non-priority unsecured claims.

No party in interest timely filed written opposition. Accordingly, this motion will be 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.

4. [23-10725](#)-B-13 **IN RE: DAVID WRIGHT**
[MHM-1](#)

MOTION TO DISMISS CASE AND/OR MOTION FOR SANCTIONS
5-3-2023 [[18](#)]

MICHAEL MEYER/MV

NO RULING.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to (1) dismiss this case for cause and with prejudice under 11 U.S.C. §§ 329 and 1307 for repeatedly filing skeletal petitions in bad faith, (2) bar Debtor from future filings for a minimum of two years, and (3) assess sanctions for future filings if Debtor fails file the required schedules and the chapter 13 plan on or before May 8, 2023. Doc. #18.

David Joseph Wright ("Debtor") did not timely file written opposition. However, on May 8, 2023, Debtor filed schedules and the chapter 13 plan. Docs. ##24-26.

This matter will be called and proceed as scheduled because Debtor is *pro se*.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Debtor's failure 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, Debtor's default will be 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).

BACKGROUND

Debtor filed this chapter 13 bankruptcy case on April 10, 2023. Doc. #1. It was seventh bankruptcy filing since 2019. Debtor's past six filings were all chapter 13 cases that were dismissed prior to confirmation of a plan:

Case No.	Title	Filed	Dismissed
19-11414-B-13	<i>David Joseph Wright and Jennifer Suzanne Doyle</i>	04/08/19	06/18/19
21-11268-A-13	<i>David Joseph Wright</i>	05/19/21	06/24/21
21-12825-B-13	<i>Jennifer Suzanne Doyle and David Joseph Wright</i>	12/20/21	01/26/22
22-10707-B-13	<i>David Joseph Wright, DDS</i>	04/27/22	05/26/22
22-11419-A-13	<i>David Joseph Wright, DDS</i>	08/18/22	09/06/22
22-12191-A-13	<i>David Joseph Wright, DDS</i>	12/23/22	01/10/23
23-10725-B-13	<i>David Joseph Wright [This case]</i>	04/10/23	—

Each of these cases were filed by Debtor *pro se*, and each of the past cases were dismissed prior to plan confirmation. In Debtor's first bankruptcy case, Case No. 19-11414, the debtors did file schedules and a plan but the schedules were incomplete and/or inaccurate, the plan was not set for hearing, and the debtors failed to appear at the meeting of creditors, failed to file all required documents, and failed to provide credit counseling certificates. Doc. #20. The remaining cases were dismissed for failure to file schedules and a plan. *Id.*

In this case, Debtor was required to file schedules, a plan, and credit counseling certificate not later than April 24, 2023. Doc. #3.

On April 24, 2023, Debtor filed a credit counseling certificate, which indicated that the course was completed on that same date. Doc. #11. Debtor also requested an extension of time to file the required schedules and documents. Doc. #12. The court granted this request and extended the deadline to May 8, 2023. Doc. #14. As noted above, Debtor did file schedules and a plan on May 8, 2023. Docs. ##24-26.

DISCUSSION

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).

11 U.S.C. § 109(h) requires prospective chapter 13 debtors to receive an approved credit counseling briefing during the 180-days before filing the petition. Here, Debtor completed credit counseling on April 24, 2023, and thus, it was not completed within the 180 days prior to filing the petition. Therefore, Debtor was not eligible to be a chapter 13 debtor under § 109(h) on the petition date, which warrants dismissal of this bankruptcy case.

11 U.S.C. § 349(a) affords the court judicial discretion to impose a variety of consequences of dismissal. *Duran v. Rojas (In re Duran)*, 630 B.R. 797, 809 (B.A.P. 9th Cir. 2021). For "cause," the court can (1) dismiss a case with prejudice and temporarily or permanently bar the debtor from obtaining a discharge of an existing or all existing debts, and/or (2) dismiss a case with prejudice and bar the debtor from filing a bankruptcy case for beyond the 180-day period set forth in § 109(g). § 349(a).

"Cause" has not been defined, but typically § 349(a) requires a showing of egregious conduct. "Generally, only if a debtor engages in egregious behavior that demonstrates bad faith and prejudices creditors . . . will a bankruptcy court forever bar the debtor from seeking to discharge then existing debts." *In re Tomlin*, 105 F.3d 933, 936-37 (4th Cir. 1997).

The test to determine whether there is bad faith is the "totality of the circumstances" test. *Leavitt v. Soto (In re Leavitt)*, 209 B.R. 935, 939 (B.A.P. 9th Cir. 1997), citing *In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994). The court must consider the following four factors:

- (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his Chapter 13 petition or plan in an inequitable manner;
- (2) the debtor's history of filings and dismissals;
- (3) whether the debtor only intended to defeat state court litigation; and
- (4) whether egregious behavior is present.

Duran, 630 B.R. at 810, citing *Leavitt*, 171 F.3d at 1224; see also, *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982); *In re Chinichian*, 784 F.2d 1440, 1445-46 (9th Cir. 1986). The burden is on the debtor to prove that the petition was filed in good faith. *In re Powers*, 135 B.R. 980, 997 (Bankr. C.D. Cal. 1991).

1. Whether Debtor misrepresented facts in the petition or plan, or unfairly manipulated the Bankruptcy Code, or otherwise filed petition or plan in inequitable manner: Here, the petition says that Debtor received a briefing from an approved credit counseling agent within the 180 days before filing this bankruptcy petition, but that Debtor

does not have a certificate of completion. Doc. #1. This case was filed on April 10, 2023, so a credit counseling briefing had to be taken no earlier than October 12, 2022. Debtor's most recent case filed December 23, 2022 and dismissed January 10, 2023 does not have a credit counseling certificate on file. Case No. 22-12191-A-13 (Bankr. E.D. Cal.). The case before that, filed August 18, 2022 and dismissed September 6, 2022, does not have a credit counseling certificate on file either; however, attached to the petition is a receipt for payment for a Cricket Debt Counseling Session dated August 18, 2022 at 1:26 p.m. Doc. #1, Case No. 22-11419-A-13 (Bankr. E.D. Cal.). That credit counseling receipt is dated prior to the 180-day window, and therefore, it appears that Debtor has misrepresented this fact in his petition and is unfairly manipulating the Bankruptcy Code. This factor supports imposing a bar to refiling.

2. Debtor's history of filings and dismissals: Debtor has filed seven bankruptcy cases since 2019. This factor supports imposing a bar to refiling.

3. Whether Debtor only intended to defeat state court litigation: Debtor's *Statement of Financial Affairs* indicates he has a concluded "[l]awsuit for default" against Patterson Dental. Doc. #26. Additionally, Debtor's unsecured debt includes child support, taxes owed to the Franchise Tax Board and Internal Revenue Service, student loans, and a disputed claim for lease payments. *Id.* Debtor's proposed chapter 13 plan indicates that Debtor may make payments from "any proceeds from debtor's malpractice lawsuit to the extent of [sic]." Doc. #25.

Although it is unclear whether Debtor has been filing bankruptcy to defeat state court litigation, it is clear that Debtor is or has recently been engaged in such litigation.

4. Whether egregious behavior is present: Based on Debtor's pattern of numerous bankruptcy filings, Debtor may be attempting to frustrate or delay creditors.

This matter will be called and proceed as scheduled. If Debtor does not appear at the hearing, this motion may be GRANTED, and the case DISMISSED. The court will determine at the hearing whether to impose a bar against Debtor from future filings for a minimum of two years and order that any violation shall be deemed null and void and dismissed without future notice, and that monetary sanctions shall be assessed within ten days of filing of a future petition within this time period.

5. [18-10283](#)-B-13 **IN RE: FRANK/ROSALINDA BRUM**
[MHM-1](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1
4-25-2023 [\[57\]](#)

MICHAEL MEYER/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.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves for an order determining: (1) Frank William Brum and Rosalinda Brum (collectively "Debtors") have cured the default with respect to the promissory note dated July 25, 2005, secured by a deed of trust on real property located at 3345 Stathem, Riverdale, CA 93656 ("Property"), in favor of Bank of the West ("Creditor"); and (2) all post-petition payments due and owing as of February 2018 through January 2023 have been paid. Doc. #57; see also, Claim No. 1-1.

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.

Federal Rule of Bankruptcy Procedure ("Rule") 3002.1(f) requires the trustee, within 30 days after completion of payments under the plan, to file and serve on the claim holder, debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on a claim

Rule 3002.1(g) provides that within 21 days after service of the notice under subdivision (f), the holder shall file and serve on the debtor, debtor's counsel, and the trustee, a statement indicating: (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim; and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b) (5).

Rule 3002.1(h) provides, on motion by the trustee filed within 21 days after service of the statement under subdivision (g), the court shall, after notice and a hearing, determine whether the debtor has cured the default and paid all required post-petition amounts. Trustee filed a *Notice of Final Cure Payment* pursuant to Rule 3002.1(f) on March 10, 2023. Doc. #49. Creditor did not provide Trustee with a Rule 3002.1(g) response. Since no response was filed, Trustee filed this motion. Doc. #57.

The record shows that Debtors have cured the default on the loan with Creditor and are current on mortgage payments through January 2023. Doc. #59. Trustee indicates that his office has paid a total of \$21,112.20 towards the ongoing mortgage payment, \$6,256.39 towards the pre-petition arrearage claim, and \$15.00 in late fees. *Id.*

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Pursuant to Rule 3002.1(i), Creditor and its successors in interest will be precluded from presenting any omitted information because it was required to be provided in the response to the *Notice of Final Cure* under Rule 3002.1(g). Debtors have cured the default and are current on mortgage payments through January 2023.

6. [18-10283](#)-B-13 **IN RE: FRANK/ROSALINDA BRUM**
[MHM-2](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1
4-26-2023 [[61](#)]

MICHAEL MEYER/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.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves for an order determining: (1) Frank William Brum and Rosalinda Brum (collectively "Debtors") have cured the default with respect to the promissory note dated March 5, 2007, secured by a deed of trust on real property

located at 3345 Stathem, Riverdale, CA 93656 ("Property"), in favor of Bank of the West ("Creditor"); and (2) all post-petition payments due and owing as of February 2018 through January 2023 have been paid. Doc. #61; see also, Claim 2-1.

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 debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo 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.

Federal Rule of Bankruptcy Procedure ("Rule") 3002.1(f) requires the trustee, within 30 days after completion of payments under the plan, to file and serve on the claim holder, debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on a claim

Rule 3002.1(g) provides that within 21 days after service of the notice under subdivision (f), the holder shall file and serve on the debtor, debtor's counsel, and the trustee, a statement indicating: (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim; and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5).

Rule 3002.1(h) provides, on motion by the trustee filed within 21 days after service of the statement under subdivision (g), the court shall, after notice and a hearing, determine whether the debtor has cured the default and paid all required post-petition amounts. Trustee filed a *Notice of Final Cure Payment* pursuant to Rule 3002.1(f) on March 10, 2023. Doc. #51. Creditor did not provide Trustee with a Rule 3002.1(g) response. Since no response was filed, Trustee filed this motion. Doc. #61.

The record shows that Debtors have cured the default on the loan with Creditor and are current on mortgage payments through January 2023. Doc. #63. Trustee indicates that his office has paid a total of

\$7,392.60 towards the ongoing mortgage payment, \$5,040.69 towards the pre-petition arrearage claim, and \$15.00 in late fees. *Id.*

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Pursuant to Rule 3002.1(i), Creditor and its successors in interest will be precluded from presenting any omitted information because it was required to be provided in the response to the *Notice of Final Cure* under Rule 3002.1(g). Debtors have cured the default and are current on mortgage payments through January 2023.

7. [23-10198](#)-B-13 **IN RE: SHENA SIELERT**
[MHM-2](#)

MOTION TO DISMISS CASE
5-3-2023 [\[27\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

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

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). Doc. #27. The debtor failed to appear at the scheduled 341 meeting of creditors, failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4),

failed to file all tax returns as required by 11 U.S.C. § 1308(a), and failed to commence making timely plan payments as required by § 1307(c)(4). Doc. #29. Debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for "cause". "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is cause for dismissal for failure to appear at the 341 meeting, failure to provide the trustee with all of the documentation, failure to file all tax returns, and failure to commence making timely plan payments.

In addition, the trustee has reviewed the schedules and determined that this case has a liquidation value of \$546.00 after trustee compensation if the case were converted to chapter 7. Doc. #29. This amount is comprised of the non-exempt equity in debtor's household goods, three dogs, and funds in checking account at time of filing. *Id.* The liquidation value of this case is *de minimis*. Therefore, dismissal, rather than conversion, serves the interests of creditors and the estate.

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

8. [23-10099](#)-B-13 **IN RE: ANGELA MCPHETRIDGE**
[CJK-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC
5-12-2023 [\[58\]](#)

LAKEVIEW LOAN SERVICING, LLC/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.

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

DISPOSITION: Continued to June 28, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

Lakeview Loan Servicing, LLC ("Creditor") objects to confirmation of the *Second Modified Chapter 13 Plan* filed by Angela A. McPhentridge ("Debtor") on April 21, 2023 under 11 § 1325(a)(3) because the plan was not proposed in good faith. Doc. #58. This objection will be construed as an opposition to Debtor's motion to confirm plan in matter #9 below. MAZ-2.

This objection will be CONTINUED to June 28, 2023 at 9:30 a.m. with Debtor's motion to confirm plan. Unless this case is voluntarily

converted to chapter 7, dismissed, or the Creditor's objection to confirmation is withdrawn, the Debtor shall file and serve a written response to the opposition not later than June 14, 2023. The response shall specifically address each issue raised in Trustee's and Creditor's objections to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Creditor shall file and serve a reply, if any, by June 21, 2023.

If the Debtor elects to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than June 21, 2023. If the Debtor does not timely file a modified plan or a written response, then this objection will be sustained and Debtor's motion will be denied on the grounds stated in the objection without further hearing.

Debtor's response and Creditor's reply may both be filed under the MAZ-2 Docket Control Number for Debtor's motion to confirm plan.

9. [23-10099](#)-B-13 **IN RE: ANGELA MCPHETRIDGE**
[MAZ-2](#)

MOTION TO CONFIRM PLAN
4-21-2023 [[38](#)]

ANGELA MCPHETRIDGE/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 28, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

Angela A. McPhentridge ("Debtor") moves for an order confirming the *Second Modified Chapter 13 Plan* dated April 21, 2023. Doc. #1.

Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. §§ 1322(a) and 1325(a)(6) because the plan fails to provide for submission of all or such portion of future earnings or other income to the supervision and control of the Trustee as is necessary for execution of the plan and the debtor will not be able to make all payments under the plan and comply with the plan. Doc. #53.

In matter #8 above, Lakeview Loan Servicing, Inc. ("Creditor") filed a standalone objection to confirmation to plan, which will be construed as opposition this motion. CJK-2. Creditor objects under 11 § 1325(a)(3) because the plan was not proposed in good faith.

This motion will be CONTINUED to June 28, 2023 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's and Creditor's opposition to confirmation is withdrawn, the Debtor shall file and serve a written response to the oppositions not later than June 14, 2023. The response shall specifically address each issue raised in Trustee's and Creditor's objections to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee and Creditor shall file and serve a reply, if any, by June 21, 2023.

If the Debtor elects to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than June 21, 2023. If the Debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the objections without further hearing.

11:00 AM

1. [17-13832](#)-B-13 **IN RE: DAVID BISHOP AND TIESHA GILL**
[23-1011](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-7-2023 [[1](#)]

BISHOP ET AL V. COMMUNITY MEDICAL CENTERS, INC.
GABRIEL WADDELL/ATTY. FOR PL.
DISMISSED 5/4/23

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

This adversary proceeding was voluntarily dismissed by the plaintiff pursuant to Fed. R. Bankr. P. 7041 on May 4, 2023. Doc. #17. The adversary proceeding was administratively closed on May 22, 2023. Accordingly, this status conference will be dropped and taken off calendar pursuant to the voluntary dismissal.

2. [21-10753](#)-B-7 **IN RE: GUSTAVO DEL TORO**
[21-1027](#) [FRB-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FRANDZEL ROBINS
BLOOM & CSATO, L.C. FOR MICHAEL J. GOMEZ, PLAINTIFFS
ATTORNEY(S)
4-25-2023 [[95](#)]

PRODUCERS LIVESTOCK MARKETING ASSOCIATION V. DEL TORO

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

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

Producers Livestock marketing Association ("Plaintiff") moves for an order awarding attorneys' fees and costs to its attorney, Frandzel Robins Bloom & Csato, L.C. ("FRBC") in the amount of \$234,825.75 as part of its nondischargeable judgment against Gustavo Del Toro ("Defendant") pursuant to LBR 1001-1(c), LR 292-93, and Civ. Rule 54, *as incorporated by* Rule 7054.¹ This amount consists of \$204,355.93 in fees and \$30,469.82 in costs as the reasonable and necessary costs of enforcing a judgment under Cal. Civ. Proc. Code ("CCP") § 685.040.

Alternatively, Defendant asserts entitlement to its reasonable attorneys' fees and costs as a prevailing party on the contract under Cal. Civ. Code ("CC") § 1717.

Defendant did not timely file written opposition. This matter will be called and proceed as scheduled. The court is inclined to GRANT IN PART this motion as modified below.

This motion was set for hearing on 28 days' notice as required by LBR 9014-1(f)(1). Defendant's failure 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, Defendant's default is 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 of entitlement to the relief sought, which Plaintiff has done here.

Defendant filed chapter 7 bankruptcy on March 29, 2021. Bankr. Case No. 21-10753-B-7 ("Bankr.") Doc. #1. After investigating Defendant's activities, attending meetings of creditors, and taking a Rule 2004 examination, Plaintiff timely filed a complaint against Defendant for a determination that Defendant's debt owed to Plaintiff on account of a state court judgment was non-dischargeable. Doc. #1. Defendant filed an answer to the complaint on August 5, 2021. Doc. #8.

The court conducted a two-day trial on December 8-9, 2022. At trial, Plaintiff had two non-expert witnesses, Rick O'Brien and Matthew Beechinor, as well as two expert witnesses, Robert Bennett and Donald G. Howell, who gave testimony on behalf of Plaintiff. On March 28, 2023, the court entered a memorandum decision, and on April 11, 2023, the court entered judgment in favor of Plaintiff on its claim under 11 U.S.C. § 523(a)(2)(B). Docs. #89; #92. Plaintiff was awarded a nondischargeable money judgment in the amount of \$251,632.36 plus interest accruing at a rate of \$61.29337 per day after October 30, 2020. *Id.* The judgment further provides that:

Additional attorney's fees and costs may be awarded to [Plaintiff] pursuant to a motion filed by [Plaintiff] under [Civ. Rule] 54, as applicable under [Rule] 7054]. If so, then the Court will enter an Amended Judgment to reflect those updated judgment amounts.

Id. at 2:18-20.

"While there is no general right to attorney fees, bankruptcy courts may award fees in § 523 actions when authorized by state law." *Brown v. Hudson (In re Kenneth Ray Hudson)*, 2021 WL 2946426, at *10 (Bankr. E.D. Cal. July 9, 2021) (citing *Travelers Cas. & Sur. Co. of Am. v.*

PG&E, 549 U.S. 443, 451-52 (2007) (“[T]he ‘basic federal rule’ in bankruptcy is that state law governs the substance of claims.”); see also, *Cohen v. de la Cruz*, 523 U.S. 213, 223 (1998) (“In short, the text of § 523(a)(2)(A) . . . encompasses any liability arising from money, property, etc., that is fraudulently obtained, including treble damages, attorney’s fees, and other relief that may exceed the value obtained by the debtor.”)). “In non-dischargeability actions, the question for awarding attorney fees is ‘whether creditor plaintiff would be entitled to fees in state court for establishing those elements of the claim which the bankruptcy court finds support a conclusion of nondischargeability.” *Hudson*, 2021 WL 2946426, at *10, quoting *Kilborn v. Haun (In re Haun)*, 396 B.R. 522, 528 (Bankr. D. Idaho 2008).

Under CCP § 685.040, a judgment creditor is entitled to “the reasonable and necessary costs of enforcing a judgment,” including where “the underlying judgment includes an award of attorney’s fees to the judgment creditor pursuant to [CCP § 1033.5(a)(10)(A)].” CCP § 1033.5(a)(10) permits attorney fees when authorized by contract, statute, or law. *Jaffe v. Pacelli*, 165 Cal. App. 4th 927, 935 (2008) (post-judgment attorney fees may be awarded if (1) the fees were incurred to “enforce” a state court judgment, and (2) the underlying judgment included an award for attorney fees when authorized by contract under CCP § 1033.5(a)(10)(A)).

Here, Plaintiff undertook this adversary proceeding to enforce its state court judgment, which specifically provided:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that PRODUCERS LIVESTOCK MARKETING ASSOCIATION, a Utah corporation, shall be entitled to its attorney’s fees and costs on a post-judgment basis for enforcing this Judgment.

Judgment 2:12-14, *Ex. 4*, Doc. #107.

Plaintiff incurred fees and costs in connection with enforcing the state court judgment and its debt against Defendant, which included prosecuting the instant adversary proceeding through trial and entry of the judgment. Doc. #98. The rates charged by FRBC range between \$340-\$495 per hour. *Id.* Plaintiff’s attorney provided approximately 520 hours of legal services totaling **\$204,355.93** in fees.

The court intends to reduce the attorneys’ fees award for the following entries that are vague as a result of redaction:

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Date	Initials	Hours	Fees	Description
01/25/22	RJC	3.9	\$1,462.50	REVIEW AND ANALYZE [REDACTED] RECEIVED FROM CLIENT FOR [REDACTED]
01/26/22	RJC	0.5	\$187.50	REVIEW [REDACTED] [REDACTED] RECEIVED FROM CLIENT
03/16/22	MJG	3.4	\$1,598.00	ANALYZE [REDACTED]
03/16/22	GW	0.9	\$346.50	REVIEW AND ANALYZE [REDACTED]
03/16/22	GW	0.3	\$115.50	ANALYZE [REDACTED]
03/16/22	GW	0.8	\$308.00	REVIEW AND ANALYZE [REDACTED]
07/27/22	RJC	0.5	\$187.50	DISCUSSION WITH B. PATZWALD AND M. GOMEZ RE [REDACTED]
07/27/22	BP	0.5	\$115.00	ANALYSIS AND STRATEGY RE: [REDACTED]
07/29/22	RJC	0.5	\$187.50	DISCUSSION WITH B. PATZWALD RE [REDACTED]
08/02/22	MJG	0.1	\$47.00	CORRESPOND WITH COUNSEL REGARDING [REDACTED]
10/07/22	GW	0.9	\$346.50	ANALYZE WHETHER [REDACTED]
11/08/22	MJG	0.4	\$188.00	ANALYZE ISSUES [REDACTED]
11/16/22	MJG	0.6	\$282.00	ANALYZE [REDACTED]
11/18/22	MJG	0.4	\$188.00	ANALYZE [REDACTED]
11/29/22	MJG	0.4	\$188.00	ANALYZE [REDACTED]
01/12/23	MJG	0.1	\$49.50	ANALYZE [REDACTED]
01/23/23	GW	3.1	\$1,271.00	ANALYZE [REDACTED]
02/14/23	MJG	0.1	\$49.50	ANALYZE [REDACTED]
02/22/23	MJG	0.5	\$247.50	ANALYZE [REDACTED]
02/25/23	MJG	0.2	\$99.00	ANALYZE [REDACTED]
03/28/23	MJG	0.3	\$148.50	ANALYZE [REDACTED]
03/30/23	MJG	0.2	\$99.00	ANALYZE [REDACTED]
Total Disallowed		18.6	\$7,711.50	

Ex. 9, Docs. #101, #103, #106. After reducing the fees by these amounts, **\$196,644.43** in attorneys' fees remains to be included in the nondischargeable judgment.

Plaintiff's incurred expenses include expert fees for Robert Bennett and Donald G. Howell totaling \$14,727.50, and non-expert expenses in the amounts of \$15,718.28 through March 2023, and \$24.04 in April 2023, totaling **\$30,469.82**:

/ / / /

Online Searches	\$13.10
Scan	\$1.25
Photocopy (Color)	\$2.40
Parking	\$3.00
Transcripts	\$464.25
Copying	\$2,167.75
Outside Reprographic	\$21.91
Online Searches	\$2,260.00
Delivery/Messengers	\$751.97
Postage	\$10.56
Local Travel	\$20.00
Court Fees	\$2,465.26
Deposition Transcripts	\$1,524.64
Trial Transcripts	\$241.20
Litigation Support Vendors	\$5,770.99
Robert Bennett Expert Fees	\$9,350.00
Donald G. Howell Expert Fees	\$5,377.50
Fee application expenses	\$24.04
Total Costs	\$30,469.82

Exs. 5-7 Doc. #104; Ex. 10, Doc. #106.

The combined reduced fees and expenses total **\$227,114.25**.

No party in interest timely filed written opposition.

Accordingly, this motion will be GRANTED. Except for those reductions of \$7,711.50 described above, the court finds the remaining fees reasonable as a component of the judgment here. Therefore, the court will enter an order awarding Plaintiff \$196,644.43 in fees and \$30,469.82 in expenses, totaling \$227,114.25.

¹ Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the U.S. Bankruptcy Court, Eastern District of California; "LR" will be to the Local Rules for the U.S. District Court, Eastern District of California; "Civ. Rule" will be to the Federal Rules of Civil Procedure; "Rule" will be to the Federal Rules of Bankruptcy Procedure; and all chapter and section references will be to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

3. [22-10060](#)-B-7 **IN RE: CURTIS/CHARTOTTE ALLEN**
[23-1005](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-23-2023 [\[1\]](#)

U.S. TRUSTEE V. ALLEN ET AL
JASON BLUMBERG/ATTY. FOR PL.

NO RULING.

4. [22-10060](#)-B-7 **IN RE: CURTIS/CHARTOTTE ALLEN**
[23-1005](#) [UST-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
4-11-2023 [\[22\]](#)

U.S. TRUSTEE V. ALLEN ET AL
JASON BLUMBERG/ATTY. FOR MV.

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.

The United States Trustee for Region 17 ("Plaintiff") requests that this court enter default judgment against Curtis James Allen and Chartotte Yvette Allen, aka Charlotte Yvette Allen (collectively "Defendants") under Civ. Rule 55, *as incorporated by* Rule 7055.² Doc. #22. Plaintiff prays for an order (1) denying the Defendants' discharge pursuant to 11 U.S.C. § 727(a)(4)(A) and (a)(6)(A); (2) prohibiting the Defendants from filing or from causing to be filed any subsequent petition for relief under the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of California for a period of **two years** without first obtaining permission from the Chief Judge; and (3) authorizing the Clerk of the Bankruptcy Court, and deputy clerks operating at the discretion and control of the Clerk, to reject any petition attempted to be filed by Defendants during the two-year period if there is not prior authorization from the Chief Bankruptcy Judge. *Id.*

Defendants did not oppose. The court is inclined to GRANT this motion.

This motion was set for hearing on 28 days' notice as required by LBR 9014-1(f)(1). Defendants' failure 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,

Defendants' default is 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 of entitlement to the relief sought, which Plaintiff has done here.

The court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b). The adversary proceeding is a "core" proceeding under 28 U.S.C. § 157(b) (2).

The court takes judicial notice of all documents and all court orders entered in the underlying bankruptcy case, Case No. 22-10060 (Bankr. E.D. Cal.) ("Bankr."), this adversary proceeding, Defendants' prior bankruptcy cases, and any other cases referenced herein pursuant to Fed. R. Evid. 201.

Defendant's former home at 4747 W. Ashland Ave., Visalia, CA 93277 ("Property") was sold at a foreclosure sale on or about January 7, 2022. *Ex. 4*, Doc. #27.

Defendants filed chapter 13 bankruptcy on January 17, 2022. Bankr. Doc. #1. However, the automatic stay did not go into effect because Defendants had two previous cases pending within a one-year period. 11 U.S.C. § 362(c) (4) (A) (i).

The case was converted to chapter 7 on July 20, 2022. Doc. #63, *id.* Defendants' attorney, Timothy C. Springer, received authorization to withdraw as Defendants' counsel of record on October 31, 2022. Bankr. Doc. #100. The withdrawal order listed Property as Defendants' last known address and included their email address.

After the case was converted to chapter 7, Defendants failed to appear at the following 341 meetings of creditors on (i) August 29, 2022, (ii) September 29, 2022, (iii) October 31, 2022, and (iv) December 12, 2022. Docs. ##24-25. On December 14, 2022, the court entered an order compelling Defendants' appearance at the 341 meeting on January 23, 2023 at 2:00 p.m. by Zoom videoconference. *Ex. 5*, Doc. #27 (Bankr. Doc. #112). On January 11, 2023, Plaintiff caused the order to be served on Defendants via first class mail directed to Property, but the envelope was returned as undeliverable. Doc. #24. Plaintiff also emailed the order to Defendants at the email address in the withdrawal order and received a responsive email from Defendants on January 13, 2023. *Id.*; *Ex. 6*, Doc. #27.

Plaintiff initiated this adversary proceeding on January 23, 2023. Doc. #1. Plaintiff complied with Fed. R. Bankr. P. 7004(b) (9) by serving Defendants at the address listed in the petition, as well as their P.O. Box and email address. Doc. #6; *cf.* Bankr. Docs. #1, #100. Although the mailings were returned as undeliverable, Defendants did not file a change of address. *In re Vincze*, 230 F.3d 297, 299-300 (7th Cir. 2000) ("Rule 7004(b) (9) does not require proof of actual receipt

. . . 'service is effective on a debtor even if mailed to the wrong address, if the address to which it is mailed is the last listed by the debtor in a filed writing.'"); accord., *In re Safadi*, 431 B.R. 478, 482 (Bankr. D. Ariz. 2010) ("The Seventh Circuit's interpretation of the Bankruptcy Rule provisions for service by first class mail is correct, and this court therefore follows it."), *In re Cossio*, 163 B.R. 150, 155 (B.A.P. 9th Cir. 1994), *aff'd*, 56 F.3d 70 (9th Cir. 1995) ("Service by mail under Rule 7004(b)(9) does not require actual receipt by the person being served."). Defendants were also served via email and at Mr. Allen's place of employment. *Ex. 7*, Docs. #27; #8.

Plaintiff alleges Defendants made false oaths in the petition, schedules, and statement of financial affairs by failing to disclose the foreclosure sale or their claim to the surplus funds from the sale. Defendants signed their petition, schedules, and statement of financial affairs under penalty of perjury. *Ex. 2*, Doc. #27 (Bankr. Doc. #1).

Specifically, Defendants claimed that they owned Property, which was valued at \$436,300. Defendants claimed that they did not have any "[c]laims against third parties" nor any "[c]ontingent and unliquidated claims of every nature." *Id.* Instead, Property was sold at public auction for \$310,100 on January 7, 2022. The unpaid debt was \$175,927.27. As a result, the chapter 7 trustee is currently holding approximately \$131,057.73 in surplus funds from the foreclosure sale. Doc. #25.

Defendants did not file an answer or other response to the complaint and their defaults were entered on March 13, 2023. Docs. #13; #15.

11 U.S.C. § 727(a)(4)(A) provides an exception to discharge if the debtor knowingly and fraudulently made a false oath or account in or in connection with the case. Here, Defendants made false oaths by failing to disclose their claim for the surplus proceeds from the foreclosure sale and by failing to disclose the foreclosure of Property.

11 U.S.C. § 727(a)(6)(A) provides for an exception to discharge if the debtor has refused in the case to obey any lawful order of the court, other than an order to respond to a material question or to testify. Here, Defendants were ordered to appear at the 341 meeting of creditors via Zoom on January 23, 2023. Defendants responded to the email informing them of their obligation to appear, and therefore, they knowingly refused to appear. *Ex. 6*, Doc. #27.

This matter will be called and proceed as scheduled.

The court is inclined to GRANT the motion and enter a default judgment against Defendants Curtis James Allen and Chartotte Yvette Allen aka Charlotte Yvette Allen: (1) denying Defendants' discharge pursuant to 11 U.S.C. § 727(a)(4)(A) and (a)(6)(B); (2) prohibiting Defendants from filing or causing to be filed any subsequent petition for relief

under the Bankruptcy Code in this district for a period of two years without first obtaining permission from the Chief Bankruptcy Judge; and (3) authorizing the Clerk of the Bankruptcy Court, and deputy clerks operating at the discretion and control of the Clerk of the Court, to reject any petition attempted to be filed by the Defendants during the two-year period if there is not prior authorization from the Chief Bankruptcy Judge.

² Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the U.S. Bankruptcy Court, Eastern District of California; "Rule" will be to the Federal Rules of Bankruptcy Procedure; "Civ. Rule" will be to the Federal Rules of Civil Procedure; and all chapter and section references will be to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.