



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

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

Hearing Date: Wednesday, June 14, 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. [22-11806](#)-B-13 **IN RE: GUSTAVO/ARACELI CERVANTES**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
3-16-2023 [[30](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This motion was originally heard on April 19, 2023. Doc. #46.

Chapter 13 trustee Michael H. Meyer ("Trustee") moved to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors and failure to confirm a chapter 13 plan. Doc. #30.

This motion was continued to May 10, 2023 to be heard in connection with Debtors' motion to confirm the *Second Modified Chapter 13 Plan* dated April 5, 2023. Docs. ##46-47. The plan was withdrawn on May 3, 2023. Doc. #57.

That same day, Gustavo Cervantes and Araceli Cervantes (collectively "Debtors") filed a response to this motion, indicating that they had filed the *Third Modified Chapter 13 Plan*, which is set for hearing on June 14, 2023 in matter #3 below. Docs. #53, #59; TCS-3. The court continued this motion to June 14, 2023 to be heard in connection with the motion to confirm plan and set July 12, 2023 as a bar date by which a plan must be confirmed or the case will be dismissed on Trustee's declaration. Doc. #68.

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, this case was filed on October 21, 2022. Doc. #1. As of the date of this hearing, seven months and 24 days have passed since this case was filed, and no plan has been confirmed.

Trustee has reviewed the schedules and determined that there is no equity in this case that could be realized for the benefit of

unsecured claims. Doc. #30. Debtors have claimed exemptions in all of their personal property assets. Since there is no equity for unsecured claims, dismissal, rather than conversion, best serves the interests of creditors and the estate.

This matter will be called and proceed as scheduled to inquire about the parties' intentions.

2. [22-11806](#)-B-13 **IN RE: GUSTAVO/ARACELI CERVANTES**
[MHM-3](#)

MOTION TO DISMISS CASE
5-5-2023 [[61](#)]

TIMOTHY SPRINGER/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 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) for unreasonable delay by debtors that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) debtors' failure to make all payments due under the plan. Doc #61. Debtor did not oppose.

Gustavo Cervantes and Araceli Cervantes (collectively "Debtors") did not oppose. This matter will be called and proceed as scheduled to inquire whether Debtors are current under the proposed plan. If not, 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). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Trustee indicates that Debtors are delinquent in the amount of \$2,600.00 as of May 5, 2023. Doc. #63. Before this hearing, another payment in amount of \$250.00 will also come due, for a total delinquency of \$2,850.00. *Id.* Debtors did not oppose.

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

In addition, the trustee has reviewed the schedules and determined that the debtors' assets are over encumbered and are of no benefit to the estate. Because there is no equity to be realized for the benefit of the estate, dismissal is in the best interests of creditors and the estate. Doc. #61

This matter will be called and proceed as scheduled to inquire whether Debtors are current on payments under the plan. If so, this motion will be DENIED WITHOUT PREJUDICE. If not, this motion may be GRANTED, and the case dismissed.

3. [22-11806](#)-B-13 **IN RE: GUSTAVO/ARACELI CERVANTES**
[TCS-3](#)

MOTION TO CONFIRM PLAN
5-3-2023 [[49](#)]

ARACELI CERVANTES/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

Gustavo Cervantes and Araceli Cervantes (collectively "Debtors") move for an order confirming the *Third Modified Chapter 13 Plan* dated May 3, 2023. Doc. #49.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest except Trustee 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 Trustee 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).

Here, the 36-month plan proposes that Debtors will pay \$650.00 in the aggregate for months 1-5 and \$250.00 per month starting in month 6 with a 4% dividend to allowed, non-priority unsecured claims. Doc. #53. Debtors' *Amended Schedules I and J* indicate receipt of \$250.00 in monthly net income, which is sufficient to fund the proposed plan payment. Doc. #56.

Trustee objects because Debtors are above median income and have proposed a 36-month plan, rather than a 60-month plan. Doc. #70; *cf.* Doc. #23.

Since the court set July 12, 2023 as a bar date by which a chapter 13 plan must be confirmed or the case will be dismissed on Trustee's declaration, this matter will be called and proceed as scheduled. Doc. #98.

4. [23-10712](#)-B-13 **IN RE: SARAH FLORES GARZA**
[MHM-1](#)

MOTION TO DISMISS CASE
5-12-2023 [[26](#)]

MICHAEL MEYER/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 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) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 109(h) debtor's failure to timely complete credit counseling. Doc #26. Sarah Susanne Flores Garza ("Debtor") did not oppose.

This matter will be called and proceed as scheduled because Debtor is *pro se*. Unless the Trustee's motion is withdrawn before the hearing, the 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). Therefore, the defaults of the above-mentioned parties in interest 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 by the debtor that is prejudicial to creditors.

Under 11 U.S.C. § 109(h), an individual is ineligible to be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received an individual briefing from an approved nonprofit budget and credit counseling agency described in § 111(a).

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). Additionally, Debtor failed to timely complete credit counseling as required by 11 U.S.C. § 109(h), and therefore, Debtor is ineligible to be a chapter 13 debtor.

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

5. [23-11116](#)-B-13 **IN RE: HUMBERTO/NANCY VIDALES**
[TCS-1](#)

MOTION TO IMPOSE AUTOMATIC STAY
5-31-2023 [\[8\]](#)

NANCY VIDALES/MV
TIMOTHY SPRINGER/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.

Humberto Crispin Vidales and Nancy E. Garcia Vidales (collectively "Debtors") request an order imposing the automatic stay under 11 U.S.C. § 362(c)(4). Doc. #8.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served 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 set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

Under 11 U.S.C. § 362(c)(4)(A), if a debtor has two or more cases pending within the previous year that were dismissed, the automatic stay under subsection (a) will not go into effect when the latter case is filed. Debtors have two previous cases that were pending within the preceding one-year period that were dismissed: Case Nos. 19-14186-B-13 and 23-10392-B-13. The first case was filed on October 2, 2019 and was dismissed on February 23, 2023 for failure to make plan payments. The second case was filed on March 1, 2023 and was voluntarily dismissed on May 17, 2023. Doc. #53. This case was filed on May 25, 2023 and the automatic stay did not go into effect. Doc. #1.

11 U.S.C. § 362(c)(4)(B) allows the court to impose the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing within 30 days where the debtor demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(4)(D) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* 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. 1785 (2019)).

In this case, the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith as to all creditors because Debtor has more than two previous cases under chapter 13 that were pending within the preceding one-year period and Debtor failed to perform the terms of a confirmed plan. § 362(c)(4)(D)(i)(I), (c)(4)(D)(i)(II).

Joint debtor Humberto Vidales declares that the first case was dismissed after three years of payments because he had been making less money due to COVID. Doc. #10. Debtors paid a total of \$136,127.04 to the chapter 13 trustee while also making mortgage payments outside

of the plan. When the second case was filed, it was fraught with errors because the prior paperwork was intermingled with current paperwork, which made it difficult to distinguish information needed to confirm the plan. *Id.* Additionally, some of Debtors' documents were misplaced and not sent to the trustee. After consultation with their attorney, Debtors decided to voluntarily dismiss the second case and refile to avoid any further issues and clarify the record.

Debtors filed bankruptcy in an effort to organize their finances and learn to budget within their means. Debtors believe they will be able to make the payment going forward, but Debtors need the automatic stay to avoid repossession of their property. *Id.*

The *Chapter 13 Plan* dated May 25, 2023 provides for 60 monthly payments of \$3,700.00 with an 8% dividend to unsecured claims. Doc. #3. Debtors' *Schedules I and J* indicate that Debtor receives \$3,700.00 in monthly net income, including their Class 4 mortgage payment, which is sufficient for Debtors to afford the proposed plan payment. Doc. #1.

In contrast to the previous two cases, Debtors were receiving \$3,400.00 in monthly net income in March of 2023, and \$3,697.00 in monthly net income in August of 2020. Bankr. Case Nos. 23-11116, Doc. #1; 19-14186, Doc. #104. Although these net incomes are similar, their gross income appears to have increased by nearly \$1,000: from \$10,163 to \$11,154. It appears Debtors' financial condition has materially changed since the last case was filed.

Based on the moving papers and the record, the presumption appears to have been rebutted by clear and convincing evidence because Debtors' financial condition and circumstances have materially changed. Debtors' petition appears to have been filed in good faith and the proposed plan does appear to be feasible.

This matter will be called and proceed as scheduled. In the absence of opposition at the hearing, this motion may be GRANTED. 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).

6. [23-11119](#)-B-13 **IN RE: LUIS BORGES**
[PLG-1](#)

MOTION TO EXTEND AUTOMATIC STAY
5-31-2023 [\[8\]](#)

LUIS BORGES/MV
STEVEN ALPERT/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.

Luis Fernando Borges ("Debtor") requests an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #8.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served 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 set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay under subsection (a) shall terminate with respect to the debtor on the 30th day after the latter case is filed. Debtor had one case pending within the preceding one-year period that was dismissed: Case No. 19-15350-B-13. That case was filed on December 27, 2019 and was dismissed on April 18, 2023 for failure to make all payments due under the confirmed chapter 13 plan.¹ This case was filed on May 25, 2023. Doc. #1. The automatic stay will expire on June 24, 2023.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed. Such request must be made within 30 days of the petition date.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* 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. 1785 (2019)).

In this case, the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith as to all creditors because Debtor has more than one previous case under chapter 13 that was pending within the preceding one-year period and Debtor failed to perform the terms of a confirmed plan. § 362(c) (3) (C) (i) (I), (c) (3) (C) (i) (II) (cc).

Debtor declares that the previous case was dismissed because Debtor lost his job in October 2022, which resulted in falling behind on his plan payments. Doc. #10. Debtor just started a new job, but it came too late for him to save the prior case. *Id.* Debtor has experienced a significant change in circumstances and now makes more than he did when he filed the previous bankruptcy. *Id.* Debtor further declares that he is proposing a plan with a 100% dividend to unsecured creditors. *Id.*

The *Chapter 13 Plan* dated May 25, 2023 provides for 60 monthly payments of \$250.00 with a 100% dividend to unsecured claims. Doc. #3. Debtor's *Schedules I and J* indicate that Debtor receives \$1,048.33 in monthly net income, which is sufficient for Debtor to afford the proposed plan payment. Doc. #1.

In contrast to the previous case, Debtor was receiving \$313.00 in monthly net income, so Debtor's financial condition has materially changed since the last case was filed. See, Bankr. Case No. 19-15350, Doc. #1.

Based on the moving papers and the record, the presumption appears to have been rebutted by clear and convincing evidence because Debtor's financial condition and circumstances have materially changed. Debtor's petition appears to have been filed in good faith and the proposed plan does appear to be feasible.

This matter will be called and proceed as scheduled. In the absence of opposition at the hearing, this motion may be GRANTED. 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).

¹ Debtor has also filed one other case: Case No. 09-13417 filed on April 17, 2009 in which Debtor received a discharge on July 22, 2009.

7. [20-13621](#)-B-13 **IN RE: MICHELL ROBLES**
[SLL-1](#)

MOTION TO MODIFY PLAN
4-10-2023 [\[24\]](#)

MICHELL ROBLES/MV
STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

Michell Robles ("Debtor") moves for an order confirming the *First Modified Chapter 13 Plan* dated April 10, 2023 (the "Proposed Plan"). Doc. #24.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed. Doc. #32.

Debtor replied. Doc. #34.

This matter will be called and proceed as scheduled. Debtor indicates that the parties believe Trustee's objection can be resolved in the order confirming plan, and if not, then the motion will be withdrawn.

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 U.S. Trustee, or any other party in interest except Trustee 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 Trustee 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).

The Proposed Plan proposes that Debtor will make 36 monthly payments of \$265.43 with a 14% dividend to allowed, non-priority unsecured claims. Doc. #28. Debtor's *Amended Schedules I and J* indicate receipt of \$265.43 in monthly net income, which is sufficient to fund the proposed payment.

In contrast, Debtor's *Chapter 13 Plan* dated November 16, 2020, confirmed February 1, 2021 (the "First Plan") provided for 36 monthly payments of \$111.00 with a 0% dividend to allowed, non-priority unsecured claims. Docs. #2, #16. However, the order confirming the First Plan indicated that the chapter liquidation test required priority and general unsecured creditors to receive a total of \$4,200.00, which is 14% of \$28,411.48, and the plan payment is \$265.32 per month effective month 1. *Id.*

Trustee objects under 11 U.S.C. § 1322(a) because the Proposed Plan fails to provide for submission of all or such portion of future earnings or other income to the supervision and control of Trustee as is necessary to execute the plan. Doc. #32. Trustee indicates that he has paid 22.88% to of the \$18,375.32 in general unsecured claims for a total of \$4,204.44. This percentage cannot be reduced.

Additionally, Trustee notes that the Proposed Plan does not list a start date for the change in payment and fails to list a start date for the monthly dividend to TD retail. *Id.*

In reply, Debtor believes Trustee's objection to the Proposed Plan can be resolved in an order confirming plan; otherwise, Debtor will withdraw the motion. This motion will be called and proceed as scheduled.

8. [23-10724](#)-B-13 **IN RE: ALMA ZAVALA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
5-23-2023 [\[16\]](#)

MARCUS TORIGIAN/ATTY. FOR DBT.

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

DISPOSITION: Continued to July 12, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* dated April 10, 2023 filed by Alma Sulema Zavala ("Debtor") under Local Rule of Practice ("LBR") 3015-1(c)(4). Doc. #16. Trustee objects because (1) Debtor has not scheduled all debts required to be scheduled pursuant to 11 U.S.C. § 521(a); (2) Debtor will not be able to make all payments under the plan and comply with the plan as required by 11 U.S.C. § 1325(a)(6); and (3) the plan does not provide for all of Debtor's projected disposable income to be applied to unsecured creditors under the plan as required by § 1325(b). *Id.*

This objection will be CONTINUED to July 12, 2023 at 9:30 a.m. Unless the case is voluntarily converted to chapter 7, dismissed, or the Trustee's objection to confirmation is withdrawn, the Debtor shall file and serve a written response to the objection not later than June 28, 2023. The response shall specifically address each issue raised in Trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee shall file and serve a reply, if any, by July 5, 2023.

If 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 July 5, 2023. If the Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

9. [23-10725](#)-B-13 **IN RE: DAVID WRIGHT**
[FDA-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
5-24-2023 [\[28\]](#)

NORTH PALM INVESTMENT COMPANY/MV
JOHN WASTE/ATTY. FOR MV.

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.

North Palm Investment Company ("Movant") requests an order confirming that no automatic stay is in effect so that Movant can proceed with its unlawful detainer proceeding against David Joseph Wright ("Debtor"). Doc. #28.

This is Debtor's fourth bankruptcy case in a one-year period.² Under 11 U.S.C. § 362(c)(4)(A)(i), no automatic stay went into effect when Debtor filed this bankruptcy case because he had three prior cases pending within one year of the petition date. Debtor did not file a motion to impose the automatic stay under § 362(c)(4)(B), and therefore, the automatic stay never became effective in this case.

Additionally, on May 31, 2023, the court heard and granted the chapter 13 trustee's motion to dismiss this case and imposed a one-year bar to refiling any petition in this district without first obtaining written approval from the Chief Bankruptcy Judge. Docs. #34, #36.

Under § 362(c)(4)(A)(ii), on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect. Movant may lodge a proposed order confirming that the stay is not in effect.

² Debtor's recent cases include: (1) Case No. 22-12191-A-13 filed December 23, 2022 and dismissed January 10, 2023; (2) Case No. 22-11419-A-13 filed August 18, 2022 and dismissed September 6, 2022; and (3) Case No. 22-11419-A-13 filed April 27, 2022 and dismissed May 26, 2022.

11:00 AM

1. [23-10029](#)-B-7 **IN RE: LOUIS/AMY GENARO**
[23-1020](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-6-2023 [[1](#)]

GENARO V. AMERICAN EXPRESS NATIONAL BANK
TIMOTHY SPRINGER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

This status conference will be called and proceed as scheduled. The court will inquire about the plaintiff's status report, which was due not later than June 7, 2023. See Doc. #18.

2. [20-13855](#)-B-11 **IN RE: MOHOMMAD KHAN**
[21-1026](#) [DCN-52222](#)

AMENDED MOTION TO SET ASIDE DISMISSAL OF CASE
4-14-2023 [[58](#)]

KHAN V. WILMINGTON TRUST N.A
CLOSED 12/06/2021; DEBTOR DISMISSED 09/24/2021;

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

The court has already denied the plaintiff's request to set aside dismissal two times. Docs. ##40-41, #59, #61. For the reasons denying the previous motion in the court's *Civil Minutes* dated April 19, 2023, this motion is DENIED. Doc. #59.

3. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[20-1002](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-14-2020 [[1](#)]

TULARE LOCAL HEALTHCARE DISTRICT V. BAKER & HOSTETLER
RILEY WALTER/ATTY. FOR PL.
DISMISSED 2/28/23, CLOSED 3/20/23

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

This adversary proceeding was dismissed with prejudice on February 28, 2023 pursuant to the parties' stipulation. Doc. #64. Accordingly, this status conference will be DROPPED and taken off calendar.