

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, June 15, 2022  
Place: Department B – Courtroom #13  
Fresno, California

*The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).*

**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.**

9:30 AM

1. [18-14454](#)-B-13     **IN RE: ESEQUIEL/ROXANNE PEREZ**  
[MAZ-4](#)

MOTION TO APPROVE LOAN MODIFICATION  
5-31-2022    [[74](#)]

ROXANNE PEREZ/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.

NO RULING.

Esequiel Perez and Roxanne D. Perez ("Debtors") request authority to enter into a home loan modification agreement with Freedom Mortgage ("Creditor"). Doc. #74.

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 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.

Debtors filed chapter 13 bankruptcy on October 31, 2018. Doc. #1. The *Chapter 13 Plan* dated October 31, 2018 was confirmed on April 16, 2019. Docs. #5; #48. The mortgage securing Debtors' residence at 2256 N. Duke Street, Visalia, CA 93291 ("Property") was transferred to Creditor on or about July 17, 2020. Doc. #76.

Property is listed in the schedules with a value of \$320,000.00. Doc. #1, *Sched. A/B*. It was originally encumbered by a \$295,535.00 mortgage in favor of Universal American Mortgage, which was eventually assigned to Creditor. *Id.*, *Sched. D*; Doc. #76. Debtors now request approval to enter into a loan modification agreement with respect to the loan securing Property. *Id.*

LBR 3015-1(h)(1)(C) allows a debtor, *ex parte* and with court approval, to refinance existing debts encumbering the debtor's residence if the written consent of the chapter 13 trustee is filed with or as part of the motion. The trustee's approval is certification to the court that: (i) all chapter 13 plan payments are current; (ii) the chapter 13 plan is not in default; (iii) the debtor has demonstrated an ability to pay all future plan payments, projected living expenses, and the refinanced debt; (iv) the new debt is a single loan incurred only to refinance existing debt encumbering the debtor's residence; (v) the

only security for the new debt is the debtor's existing residence; (vi) all creditors with liens and security interests encumbering the debtor's residence will be paid in full from the proceeds of the new debt and in a manner consistent with the plan; and (vii) the monthly payment will not exceed the greater of the debtor's current monthly payments on the existing debt, or \$2,500.

If the trustee will not give consent, or if a debtor wishes to incur new debt on terms and conditions not authorized by subsection (h) (1) (C), the debtor may still seek court approval under LBR 3015-1(h) (1) (E) by filing and serving a motion on the notice required by Rule 2002 and LBR 9014-1.

Here, the loan modification proposes to capitalize: (a) \$281,247.24, which is the pre-modification principal balance; (b) \$12,041.09 in delinquent interest; (c) \$10,780.27 in escrow advances; and (d) \$900.00 in "Freedom Advances". Doc. #77, *Ex. A*. After application of \$1,160.54 in suspense funds credit to interest and/or advances, the new principal balance will be \$303,808.06.

The terms of the modification are as follows:

|                        |               |
|------------------------|---------------|
| Principal balance:     | \$303,808.06  |
| Interest rate:         | 3.125%        |
| Monthly payments:      | \$1,511.39    |
| Escrow account:        | \$695.34      |
| Total monthly payment: | \$2,206.73    |
| Maturity date:         | June 14, 2045 |

*Id.* Based on the record, it appears that this is a single loan incurred only to refinance existing debt encumbering Debtors' residence, the only security for the new debt will be the Debtors' residence, all creditors with liens and security interests will be paid in full from the proceeds, and the monthly payment will not exceed \$2,500.

However, it is unclear whether all chapter 13 plan payments are current, whether the chapter 13 plan is not in default, and whether Debtors have demonstrated an ability to pay all future plan payments, living expenses, and the refinanced debt. Debtors' chapter 13 plan provides for monthly payments of \$3,270.37, which includes a monthly mortgage payment in Class 4 in the amount of \$2,159.00. Doc. #5; *cf.* Doc. #1, *Sched. J*. Based on the current *Schedules I* and *J*, Debtors have \$7,393.00 in monthly gross income and \$3,270.37 in monthly net income after expenses, which is just enough for the plan payment. *Ibid.*; Doc. #21, *Am. Sched. I*. This loan modification will increase Debtors' mortgage payment by approximately \$48 dollars, which will cause Debtors to be short on their plan payment by the same amount.

This matter will be called as scheduled to inquire whether (i) all chapter 13 plan payments are current; (ii) the chapter 13 plan is not in default; and (iii) whether Debtors have the ability to pay all

future plan payments, projected living expenses, and the refinanced debt.

If approved, any order confirming the modification shall provide that Debtors are authorized, *but not required*, to enter into a loan modification agreement with Creditor.

2. [22-10568](#)-B-13     **IN RE: JUAN ALARCON**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
5-31-2022     [[36](#)]

ARETE KOSTOPOULOS/ATTY. FOR DBT.  
DISMISSED 6/1/22

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

DISPOSITION:     Overruled as moot.

ORDER:     The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to the confirmation of Juan Fabin Alarcon's ("Debtor") chapter 13 plan. Doc. #36.

However, this bankruptcy case was dismissed on June 1, 2022. Doc. #45. Accordingly, this objection will be OVERRULED AS MOOT.

3. [21-10681](#)-B-13     **IN RE: TERRY JACOBS**  
[MHM-1](#)

MOTION TO DISMISS CASE  
5-13-2022     [[90](#)]

MICHAEL MEYER/MV  
PETER BUNTING/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Denied as moot.

ORDER:     The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(2) for unreasonable delay by the debtor that is prejudicial to creditor and failure to make all payments due under the plan. Doc. #90.

Terry LaVon Jacobs ("Debtor") timely filed opposition acknowledging the delinquency, stating that \$5,000 had been paid as of May 27, 2022, and indicating that Debtor intended to file a modified plan to cure the remaining delinquency. Docs. ##94-96. However, on June 13, 2022, Debtor filed an *ex parte* motion to dismiss this case with a supporting declaration. Docs. ##98-100. As a result, this case will be dismissed under § 1307(b).

Accordingly, Trustee's motion will be DENIED AS MOOT because the case has already been dismissed.

4. [20-12990](#)-B-13     **IN RE: SIMPLICIO/SALUD SABERON**  
[RSW-3](#)

CONTINUED MOTION TO WAIVE SECTION 1328 CERTIFICATE  
REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY,  
AS TO DEBTOR , NOTICE OF DEATH OF A DEBTOR  
4-6-2022    [\[50\]](#)

SALUD SABERON/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:     Withdrawn; dropped from calendar.

NO ORDER REQUIRED.

The debtors withdrew this motion on June 8, 2022. Doc. #58.  
Accordingly, the hearing on this motion will be dismissed and DROPPED  
FROM CALENDAR.

5. [21-12297](#)-B-13     **IN RE: ISAAC/WANDA SANTOS**  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-13-2022    [\[65\]](#)

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

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

DISPOSITION:     Denied as to dismissal and converted to chapter 7.

ORDER:             The court will issue an order.

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(6) for failure to complete the terms of the confirmed plan. Doc #65. Debtors did not oppose.

Unless the trustee's motion is withdrawn before the hearing, the motion will be DENIED as to dismissal and CONVERTED TO CHAPTER 7 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.

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.

The record shows that the debtors have failed to make all payments due under the plan (11 U.S.C. § 1307(c)(6)). Debtors are delinquent in the amount of \$2,931.05. Doc. #67. Before this hearing, another payment in the amount of \$2,666.21 will also come due. Doc. #67.

In addition to the delinquency described above, the trustee has reviewed the schedules and determined that the debtors have approximately \$11,351.63 in non-exempt equity that could be liquidated for the benefit of the estate, which consists of equity in multiple vehicles. The court agrees and finds that the best interests of creditors and the estate would be served by conversion to chapter 7 under § 1307(c).

Accordingly, the motion will be DENIED as to dismissal, and the court will *sua sponte* CONVERT THIS CASE TO CHAPTER 7.