

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday June 30, 2022  
Place: Department A – Courtroom #11  
Fresno, California

*Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.*

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

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

1. [17-10409](#)-A-13     **IN RE: RUVICELA NUNEZ**  
[MHM-3](#)

MOTION TO DISMISS CASE  
5-27-2022    [\[55\]](#)

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

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Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.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 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1), (c)(6) and (c)(8) for failure to complete the terms of the confirmed plan and for termination of a confirmed plan by reasons of the occurrence of a condition specified in the plan other than completion of payments under the plan. Doc. #55.

Ruvicela Nunez ("Debtor"), the debtor in this chapter 13 case, filed a bankruptcy petition on February 7, 2017. Debtor's plan term was for 60 months, and month 60 was February 2022. Doc. #55. As of May 27, 2022, Debtor has failed to make all payments under the plan and plan payments are delinquent in the amount of \$2,212.87. In addition, total claims filed in Debtor's case require an aggregate payment of \$137,556.61 as of May 27, 2022. Doc. #57. Debtor has only paid \$114,690.51. Doc. #57. Therefore, the remaining claims plus trustee compensation that need to be paid pursuant to the plan, total \$22,866.10. Doc. #57. Even if Debtor cures the payment delinquency of \$2,212.87, there will not be sufficient funds to pay claims in full. Doc #55. 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 under 11 U.S.C. § 1307(c)(1), (c)(6) and (c)(8) for failure to complete the terms of the confirmed plan. Debtor is delinquent in plan payments and there are not sufficient funds to pay the claims in full.

A review of Debtor's Schedules A/B and D shows that Debtor's significant assets, vehicles and real property, are over encumbered. Debtor claims exemptions in the remaining assets. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

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

2. [18-13911](#)-A-13      **IN RE: STEFANIE JACOBSON**  
[NES-2](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY(S)  
5-24-2022    [\[51\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION:      Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Neil E. Schwartz ("Movant"), counsel for Stefanie Louise Jacobson ("Debtor"), the debtor in this chapter 13 case, requests allowance of final compensation in the amount of \$1,597.50 and reimbursement for expenses in the amount of \$10.00 for services rendered November 23, 2020 through May 24, 2022. Doc. #51. Debtor's confirmed plan provides for \$12,000.00 in attorney's fees. Plan, Doc. ##2, 30. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of \$4,515.00 and reimbursement for expenses totaling \$456.00. Order, Doc. #40.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account

all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) reviewing correspondence from the trustee's office; (2) preparing discharge paperwork; (3) preparing and filing the fee application; and (4) general case administration. Ex. B, Doc. #53. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim bases, in addition to compensation requested by this motion in the amount of \$1,597.50 and reimbursement for expenses in the amount of \$10.00 to be paid in a manner consistent with the terms of the confirmed plan.

3. [22-10826](#)-A-13      **IN RE: CHRISTOPHER RENNA**  
[HDN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-31-2022    [\[12\]](#)

RICHARD LIMA/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
HENRY NUNEZ/ATTY. FOR MV.  
RESPONSIVE PLEADING

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 the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Debtor Christopher Andrew Renna ("Debtor") timely filed written limited opposition on June 20, 2022. Doc. #20. The movant Richard Lima ("Movant") did not reply to this opposition. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered. This matter will proceed as scheduled.

By this motion, Movant seeks relief from stay to allow Movant to proceed with a personal injury lawsuit pending as Richard Lima v. Chris Renna, et al., Case No. 18CECG00918, in the Superior Court of California, County of Fresno ("State Court Action"). Doc. #12.

Debtor filed a limited objection on June 20, 2022. Doc. #20. While Debtor does not object to Movant's claim being liquidated in state court, Debtor contends that any monetary judgment obtained in the State Court Action would be subject to Debtor's chapter 13 plan. Id. Debtor objects to Movant's assertion that the debt would be non-dischargeable in Debtor's chapter 13 case. Id.

The court has considered the motion and opposition. After due consideration, this motion will be GRANTED for cause shown to permit Movant to continue the

State Court Action to liquidate, but not enforce, Movant's claim against Debtor.

### Factual Background

On March 16, 2018, Movant commenced a personal injury claim against Debtor and Andrew Young. Decl. of Richard Lima ¶ 2, Doc. #14; Ex. A, Doc. #15. Movant seeks damages for injuries Movant sustained from an alleged attack by Debtor including a laceration on the back of head and a fractured facial right cheek bone. Lima Decl. ¶ 3, Doc. #14. On May 18, 2022, Movant was notified through his state court attorney that Debtor filed for chapter 13 bankruptcy on May 17, 2022. Lima Decl. ¶ 4, Doc. #14. Movant is listed on Debtor's Schedule F as an unsecured creditor. Am. Schedule F, Doc. #22.

A jury trial in the State Court Action was originally scheduled for May 23, 2022. Lima Decl. ¶ 5, Doc. #14. The jury trial is expected to last from four to seven days. Id. Discovery was completed, all pretrial documents were filed and subpoenas were served on witnesses to appear and testify in the State Court Action. Id. On May 24, 2022, Movant's ex parte application to continue trial was granted to allow Movant the opportunity to seek relief in bankruptcy court. Lima Decl. ¶ 6, Doc. #14. The jury trial in the State Court Action is now set for October 24, 2022. Id. The State Court Action involves multiple defendants arising from the same set of facts

Debtor's opposition does not dispute any of the facts in support of the motion.

### Cause Exists to Lift the Stay

Movant request relief from the automatic stay under 11 U.S.C. § 362(d)(1) to continue to prosecute the State Court Action. Doc. #12.

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

When a movant seeks relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The relevant Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (6) whether the litigation in the other forum has progressed to the point where the parties are prepared for trial; and (7) the impact of the automatic stay and the "balance of hurt." In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Here, the Curtis factors support finding cause to grant relief from stay as requested in the motion.

Granting relief from stay will permit the state court to resolve Movant's personal injury claims against Debtor, which the bankruptcy court would be unable to do. See 11 U.S.C. § 157(b)(5) (requiring personal injury tort claims to be tried in the district court). The claims involved in the State Court Action are routine state law claims and involve a non-debtor defendant.

Moreover, the state court is ready to commence a jury trial expected to last four to seven days in the State Court Action. It is in the interest of judicial economy and more expeditious and economical to lift the automatic stay to permit the state court to liquidate Movant's claim against Debtor in the State Court Action instead of this court determining that claim. Debtor does not object to Movant's claim being liquidated in the State Court Action. Doc. #20.

Accordingly, the court finds that cause exists to lift the stay and this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to liquidate, but not enforce, Movant's claim against Debtor in the State Court Action.

4. [17-11652](#)-A-13     **IN RE: GREGORY/ROUZANA TOROSSIAN**  
[MJA-6](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, WAIVE  
SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE ADMINISTRATION,  
SUBSTITUTE PARTY, AS TO JOINT DEBTOR  
6-2-2022    [\[126\]](#)

GREGORY TOROSSIAN/MV  
MICHAEL ARNOLD/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

Gregory Torossian ("Movant"), the surviving spouse of Rouzana Torossian ("Joint Debtor") and joint debtor in this chapter 13 case, requests the court name Movant as the successor to the deceased Joint Debtor, permit the continued administration of this chapter 13 case and waive the § 1328 certification requirements. Doc. #126.

Upon the death of a debtor in Chapter 13, Federal Rule of Bankruptcy Procedure 1016 provides that the case may be dismissed or may proceed and be concluded in the same manner, so far as possible, as though the death had not occurred upon a showing that further administration is possible and in the best interest of the parties. Joint Debtor passed away on November 26, 2021. Ex. A, Doc. #126. Appointing Movant to be the representative to proceed with case

administration is in the best interest of the parties and creditors. No objections have been filed in response to this motion.

With respect to a waiver of Joint Debtor's certification requirements for entry of discharge under 11 U.S.C. § 1328, Joint Debtor failed to meet the post-petition financial education requirements before Joint Debtor died. Decl. of Debtor, Doc. #128. Joint Debtor's death demonstrates an inability to provide certifications required and the certification requirements will be waived.

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

5. [21-10679](#)-A-13     **IN RE: SYLVIA NICOLE**  
[MHM-9](#)

MOTION TO DISMISS CASE  
5-27-2022    [\[396\]](#)

MICHAEL MEYER/MV  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to July 28, 2022, at 9:30 a.m.

ORDER:             The court will issue an order.

The trustee's motion to dismiss will be continued to July 28, 2022, at 9:30 a.m., to be heard with the debtor's motion to modify plan.

6. [22-10192](#)-A-13     **IN RE: ROBERT MARKEL**  
[DMG-1](#)

MOTION TO CONFIRM PLAN  
5-26-2022    [\[35\]](#)

ROBERT MARKEL/MV  
D. GARDNER/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.

An order dismissing this case was entered on June 23, 2022. Doc. #54. Therefore, this motion will be DENIED AS MOOT.

7. [22-10192](#)-A-13     **IN RE: ROBERT MARKEL**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
5-6-2022    [[25](#)]

MICHAEL MEYER/MV  
D. GARDNER/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.

An order dismissing this case was entered on June 23, 2022. Doc. #54.  
Therefore, this motion will be DENIED AS MOOT.

8. [17-10993](#)-A-13     **IN RE: MARTIN/ERMILA AGUILAR**  
[MHM-3](#)

MOTION TO DISMISS CASE  
5-27-2022    [[92](#)]

MICHAEL MEYER/MV  
D. GARDNER/ATTY. FOR DBT.  
RESPONSIVE PLEADING  
WITHDRAWN

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

DISPOSITION:        Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on June 23, 2022. Doc. #98.



11:00 AM

1. [21-12729](#)-A-7     **IN RE: JOSE MESTRES**  
[22-1006](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
1-20-2022     [[1](#)]

SCHOOLSFIRST FEDERAL CREDIT UNION V. MESTRES  
PAUL REZA/ATTY. FOR PL.

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

DISPOSITION:     Dropped from calendar

NO ORDER REQUIRED.

A stipulated judgment in favor of the plaintiff was entered on June 28, 2022 (Doc. #27). Accordingly, this status conference is dropped from calendar. This adversary may be administratively closed when appropriate.

2. [21-10842](#)-A-7     **IN RE: JESUS FLORES AND LETICIA HERNANDEZ**  
[21-1029](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT  
7-7-2021     [[1](#)]

VOKSHORI LAW GROUP V. FLORES  
NIMA VOKSHORI/ATTY. FOR PL.  
CLOSED 4/11/22

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on March 22, 2022. Doc. #38.

3. [22-10074](#)-A-7     **IN RE: MANJINDER SINGH**  
[22-1012](#)     [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
4-26-2022     [[1](#)]

BMO HARRIS BANK N.A. V. SINGH  
JENNIFER CRASTZ/ATTY. FOR PL.

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

DISPOSITION:     Continued to July 14, 2022, at 11:00 a.m.

ORDER:     The court will issue an order.

The status conference will be continued to July 14, 2022, at 11:00 a.m. to be heard with the motion for entry of default judgment.

4. [17-12389](#)-A-7     **IN RE: DON ROSE OIL CO., INC.**  
[17-1086](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT  
9-5-2018     [[131](#)]

KODIAK MINING & MINERALS II LLC ET AL V. DON ROSE OIL CO., INC.  
VONN CHRISTENSON/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to July 14, 2022, at 11:00 a.m.

ORDER:     The court will issue an order.

Pursuant to the joint status conference statement filed on June 23, 2022 (Doc. #609), the status conference will be continued to July 14, 2022, at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than July 7, 2022.