

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, July 20, 2022
Place: Department B – Courtroom #13
Fresno, California



Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOM VIDEO**, (3) via **ZOOM TELEPHONE**, and (4) via **COURTCALL**.

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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. [21-12802](#)-B-13 **IN RE: LATANYA LABLUE**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
6-8-2022 [[19](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
WITHDRAWN

Since posting the original pre-hearing dispositions, the court has changed its intended ruling on this matter.

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

DISPOSITION: Withdrawn; removed from calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this motion on July 13, 2022. Doc. #31. Accordingly, this motion will be removed from calendar.

2. [18-14811](#)-B-13 **IN RE: ALICE RUBIO**
[MHM-1](#)

MOTION TO DISMISS CASE
6-21-2022 [[38](#)]

MICHAEL MEYER/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Withdrawn; removed from calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this motion on July 13, 2022. Doc. #45. Accordingly, this motion will be removed from calendar.

3. [21-12814](#)-B-13 **IN RE: DUSTIN DUTRA**
[SL-3](#)

MOTION TO MODIFY PLAN
6-14-2022 [[42](#)]

DUSTIN DUTRA/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 24, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

Dustin Anthony Dutra ("Debtor") seeks confirmation of the *Second Modified Chapter 13 Plan* dated June 14, 2022 ("Plan"). Doc. #42. The Plan provides that Debtor will pay \$3,475 to Trustee through June 15, 2022 (month 5), and then \$1,280.00 per month for the remaining months 6 through 60, with a 0% dividend to allowed, non-priority unsecured claims. Doc. #47. In contrast to the *Chapter 13 Plan* dated December 17, 2021, confirmed February 14, 2022, the Plan provides for a \$40 increase in monthly plan payments while paying the same dividend to unsecured claims. *Cf.* Docs. #3; #15.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because the debtor will not be able to make all payments under the plan and comply with the plan. Doc. #51. Trustee says that the Plan is not feasible for a few reasons.

First, the plan creates a delinquency. Debtor paid \$4,470 through June 10, 2022, so he has overpaid \$995. Then, when the \$1,280 June 25 payment became due that was not paid, Debtor became delinquent \$285 (\$1,280 - \$995 = \$285). Trustee requests clarification as to what Debtor intends to be listed as the aggregate payment through month 5.

Second, full payment to Class 2 creditors Capital One and Affirm, Inc. take 71 and 84 months to fund, respectively. The monthly dividends would need to increase to fund over the remaining life of the Plan. Also, Trustee notes that Affirm, Inc. has not filed a proof of claim. *Id.*

The motion will be CONTINUED to August 24, 2022 at 9:30 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtor shall file and serve a written response not later than August 10, 2022. The response shall specifically address each issue raised in the opposition 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 August 17, 2022.

If the Debtor elects to withdraw this 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 August 17, 2022. 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 opposition without a further hearing.

4. [22-10721](#)-B-13 **IN RE: STEPHANIE FOREMAN**
[DMG-2](#)

MOTION TO CONFIRM PLAN
6-14-2022 [[33](#)]

STEPHANIE FOREMAN/MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or continued.

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

Stephanie Maryann Foreman ("Debtor") seeks confirmation of the *First Amended Chapter 13 Plan* dated June 14, 2022 ("Plan"). Doc. #33. The Plan provides that Debtor will pay \$875 per month to Trustee for 60 months with a 0.05% dividend to allowed, non-priority unsecured claims. Doc. #35. No plan has been confirmed in this case.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(4) because the plan fails to provide for the value of property to be distributed under the plan on account of each allowed unsecured claim in at least the amount that would be paid if this case were liquidated under chapter 7, and subsection (a)(6) because the debtor will not be able to make all payments under the plan and comply with the plan. Doc. #44.

First, Trustee says that *Amended Schedule C* filed June 23, 2022 indicates that this case has a liquidation value of \$1,152.63 if converted to chapter 7. Currently, the Plan only provides for \$25 to unsecured creditors, which is less than they would receive in a chapter 7 case. *Id.*; Docs. #35; #43.

Second, the Plan provides for Class 2 creditor George Foreman in the amount of \$28,635 at 6% interest with a monthly dividend of \$150. With that dividend, the claim would take 615.55 months to fund, and the plan would fund over 137.87 months. Doc. #44. If the dividend increases to \$553.59, the Plan and claim will fund over 60 months. This increase could be reflected in an order confirming the Plan.

Lastly, the Plan does not provide any additional provisions. If confirmed, the payment would be \$875 per month from month 1, which would create a \$138 delinquency compared to payments made thus far provided that Debtor begins making \$875 payments in month 3. *Id.*

Debtor responded. Doc. #48. Debtor agrees with Trustee's calculations and believes these adjustments can be reflected in an order confirming plan. As to the George Foreman claim, Debtor intended to propose a dividend of \$650. *Id.* Debtor requests that the plan be confirmed with the changes suggested by Trustee. *Id.*

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).

Since it appears Debtor may resolve Trustee's objection in an order confirming plan, this matter will be called and proceed as scheduled. The court will inquire about Trustee's reply to Debtor's response. If granted, the confirmation order shall include the docket control number of the motion, reference the plan by the date it was filed, and be approved as to form by Trustee.

5. [18-12633](#)-B-13 **IN RE: LUIS/LINDA PANAMENO**
[MHM-3](#)

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7
6-22-2022 [\[59\]](#)

THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves for an order converting this case to chapter 7 for cause under 11 U.S.C. § 1307(c) because the debtors failed to disclose a pre-petition claim for lost wages, unlawful deductions, discrimination, and a complaint arising from employment wherein debtors seek damages of \$217,999.67. Doc. #59. Trustee alleges bad faith because none of these potential claims were disclosed at the time of filing, at confirmation, after confirmation, or at the time of discharge. *Id.*

Luis Enrique Panameno and Linda Emeroc Panameno ("Debtors") did not respond. 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.

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 conversion under 11 U.S.C. § 1307(c) failing to disclose pre-petition claims and bad faith. Bad faith is determined by the totality of the circumstances, including whether the debtor filed his petition in an inequitable manner, omitted assets, and only intended to defeat state court litigation. *Velasquez v. Burchard (In re Velasquez)*, 280 Fed. Appx. 652 (9th Cir. 2008).

Debtors filed chapter 13 bankruptcy on June 28, 2018. Doc. #1. That same day, they filed a 36-month *Chapter 13 Plan* with a 0% dividend to allowed, non-priority unsecured claims. Doc. #5. The plan was confirmed on September 20, 2018. Doc. #35. Thereafter, Debtors made 36 months of plan payments and completed the plan. Doc. #43. Trustee's Final Report was filed on August 5, 2021. Doc. #45. On September 10,

2021, the court approved the Final Report and discharged Trustee. Doc. #52. Debtors' discharge was entered on October 4, 2021. Doc. #55.

Trustee's attorney, Kelsey A. Seib, declares that she was contacted on May 8, 2022 by Christopher McNatt, Jr., counsel for T.G.S. Transportation ("Third Party"), regarding a lawsuit and pending hearing before the California Labor Commissioner. Doc. #61. At no point between filing the petition and plan, attending the meeting of creditors, confirming the plan, or obtaining an order of discharge did Debtors ever disclose any pre-petition claims against Third Party.

Trustee referred the matter to the Office of the United States Trustee ("UST") on March 24, 2022. *Id.* The UST reappointed Trustee as chapter 13 trustee on May 18, 2022. Doc. #57. Trustee has been informed by Third Party that the Labor Commissioner claim is pending and a decision was expected in June 2022. As of June 22, 2022, a decision is still outstanding. Doc. #61. Trustee contends that Debtor was aware of these claims on the petition date, at the meeting of creditors, at the time of confirmation, and at the time of discharge. *Id.*

The record shows that Debtors failed to disclose a complaint with the Labor Commissioner in which Debtors seek damages of \$217,999.67. The labor claims arose in January and February 2017, so Debtors knew of the claims before filing the petition. Debtors' 0% plan was premised on their inability to pay a higher dividend to unsecured claims, which was not true. The court finds bad faith on the totality of the circumstances because it appears that Debtors omitted assets and filed the petition in an inequitable manner. Debtors have not opposed, so Trustee's factual allegations will be taken as true.

Accordingly, this motion will be GRANTED, and the case will be CONVERTED TO CHAPTER 7.

6. [22-11035](#)-B-13 **IN RE: DONALD/STEPHANIE SALKIN**
[BDB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
7-5-2022 [[14](#)]

STEPHANIE SALKIN/MV
BENNY BARCO/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Donald Lee Salkin and Stephanie Austin Salkin ("Debtors") request an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #14.

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 debtors have had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay under subsection (a) shall terminate on the 30th day after the latter case is filed. Debtors had one case pending within the preceding one-year period that was dismissed: Case No. 21-10300-B-13. That case was filed on February 5, 2021 and dismissed on April 25, 2022 because Debtors did not comply with an annual review provision in their chapter 13 plan. This case was filed on June 22, 2022. Doc. #1. The automatic stay will expire on July 22, 2022.

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.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. § 362(c)(3)(C). 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 Debtors failed to perform the terms of a confirmed plan. § 362(c)(3)(C)(i)(II)(cc), (c)(3)(C)(i)(III).

Debtors jointly declare that the order confirming their chapter 13 plan contained an annual review provision beginning February 1, 2022 and continuing for the duration of the case. Doc. #16. If employed, Debtors were required to provide a declaration with copies of all paystubs, most recent tax returns, and *Amended Schedules I and J*. If unemployed, they were required to provide a declaration with the reasons for continuing unemployment and most recent tax returns. *Id.*

Debtors declare that they provided their previous attorney with all documents necessary to complete the annual review, but the previous attorney did not complete it on their behalf. *Id.* And after Trustee filed a motion to dismiss, Debtors' previous attorney did not file a response, so the case was dismissed through no fault of their own. *Id.*

Debtors further declare that this case was filed in good faith, and they believe that they can confirm a feasible plan and make plan payments. *Id.* Without extension of the automatic stay, Debtors fear that they will lose their vehicles, which they need for transportation.

Here, the *Chapter 13 Plan* dated June 28, 2022 provides for 60 monthly payments of \$1,384.04, plus monthly \$1,640 payments to a Class 4 creditor for Debtors' mortgage, and a 23% dividend to allowed, non-priority unsecured claims. Doc. #12. Debtors' *Schedules I and J* indicate that they maintain separate households. Doc. #10. They earn \$8,631.96 in combined monthly income. *Id.*, *Sched. I*. The first joint debtor incurs \$5,667.92 in expenses, including the Class 4 mortgage, and the second incurs \$1,580.00, which leaves them with a combined \$1,384.04 in monthly net income. *Id.*, *Sched. J, J-2*.

In contrast to their previous case, the dividend to unsecured claims has risen from 4% to 23%. See Bankr. Case No. 21-10300, Docs. #3; #76. Additionally, Debtors' combined monthly income has increased \$1,189.96 from the \$7,442.00 claimed in the original schedules, causing their monthly net income to increase \$359.00 from \$1,020.00. *Id.* Doc. #1. Thus, it appears that 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).

7. [18-12050](#)-B-13 **IN RE: GENEVIEVE SANTOS**
[ALG-8](#)

MOTION TO MODIFY PLAN
5-18-2022 [[162](#)]

GENEVIEVE SANTOS/MV
JANINE ESQUIVEL OJI/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Genevieve Ann Santos ("Debtor") seeks an order confirming the *Third Modified Chapter 13 Plan* dated May 18, 2022 ("Plan"). Doc. #162.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected because the Plan proposes for payments to creditors for a period longer than five years in violation of 11 U.S.C. §§ 1322(d) and 1329(c). Doc. #169.

The Plan proposes to extend the duration of payments to 84 months under the COVID-19 Bankruptcy Relief Extension Act of 2021 ("CBREA"). Doc. #167. However, as Trustee indicates, CBREA's amendment to § 1329(d) that allowed for an extension of a plan term to 84 months sunset on March 27, 2022. See 117 P.L. 5, 135 Stat. 249; *cf.* 116 P.L. 136, 134 Stat. 281. Therefore, 11 U.S.C. § 1329 has reverted to its original language and subsections (d) and (e) have been deleted. Under 11 U.S.C. § 1329(c), the court may not approve a plan with a period that expires after five years from the time that the first payment under the original confirmed plan was due.

Accordingly, this motion will be DENIED WITHOUT PREJUDICE to filing a plan with a commitment period not exceeding 60 months.

8. [20-10859](#)-B-13 **IN RE: KEITH/GERALDINE CASH**
[TCS-5](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE
REQUIREMENT, WAIVE SECTION 1328 CERTIFICATE REQUIREMENT,
SUBSTITUTE PARTY, AS TO JOINT DEBTOR
7-6-2022 [\[66\]](#)

GERALDINE CASH/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

On March 30, 2022, joint debtor Keith Raymond Cash ("Decedent") passed away. Doc. #68, Ex. A. He is survived by his wife, joint debtor Geraldine Lee Cash ("Debtor"). Doc. #69. Debtor requests (1) continued administration of this bankruptcy case; (2) to be appointed as representative for Decedent for this joint chapter 13 bankruptcy; and (3) waiver of the § 1328(g) post-petition education requirement with respect to Decedent and of the certification requirements under § 1328(a)-(f). Doc. #66.

Written opposition was not required and may be presented at the hearing. The court is inclined to DENY WITHOUT PREJUDICE.

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. 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.

Upon the death of a debtor in a bankruptcy case that has not been closed, LBR 1016-1(a) provides that a notice of death shall be filed within sixty (60) days of the death of a debtor by counsel or the person intending to be appointed as the representative for or successor to a deceased debtor pursuant to Fed. R. Civ. P. 25(a) (Fed. R. Bankr. P. 7025). The notice of death shall be served on all other parties in interest, and a redacted copy of the death certificate shall be filed as an exhibit to the notice of death.

LBR 1016-1(b) permits the notice of death and requests for the following relief to be combined into a single motion for omnibus relief under Fed. R. Civ. P. 18(a) (Fed. R. Bankr. P. 7018, 9014(c)):

- 1) Substitution as the representative for or successor to the deceased debtor in the bankruptcy case pursuant to Fed. R. Civ. P. 25(a);
- 2) Continued administration of the case under chapter 13 pursuant to Fed. R. Bankr. P. 1016; and
- 3) Waiver of the post-petition education requirement for entry of discharge under 1328, including the post-petition education requirement under subsection (g).

Pursuant to LBR 1016-1, Debtor filed this motion for omnibus relief with a notice of death and redacted death certificate for Decedent. Docs. #58; #66; #68, *Ex. A*.

If a reorganization or individual's debt adjustment case is pending under chapter 13, Fed. R. Bankr. P. 1016 permits the case to proceed and be concluded in the same manner, so far as possible, as though the death had not occurred if two pre-requisites are met: (1) further administration is possible and (2) administration is in the best interest of all parties. However, Fed. R. Bankr. P. 1016 also allows the case to be dismissed.

Courts have held that chapter 13 cases do not need to be dismissed and may continue if (1) the debtor proposed a confirmable plan before the debtor's death; and (2) the plan is feasible after the debtor's death. *In re Perkins*, 381 B.R. 520, 537 (Bankr. S.D. Ill. 2007) (permitting further administration because it is both possible and in the best interests of parties); *In re Stewart*, 2004 Bankr. LEXIS 1042 (Bankr. D. Or. Mar. 2, 2004) (continued administration permitted if a personal representative is appointed and the confirmed plan is made current and paid through completion); *cf. In re Spider*, 232 B.R. 669, 674 (Bankr. N.D. Tex. 1999) (further administration deemed not possible because debtors' chapter 13 plan was not confirmed before death).

Here, the debtors filed chapter 13 bankruptcy on March 5, 2020. Doc. #1. Their *First Modified Chapter 13 Plan* dated June 30, 2021, confirmed September 24, 2021, is the operative plan in this case. Docs. #44; #57. It provides that the debtors paid an aggregate of \$12,798.00 for months 1-15 and shall pay \$397.00 per month for months 16-36. *Id.* The 36th month after the petition date is March 2023, so there are approximately 8 months remaining in the plan.

The schedules indicate that Decedent was disabled and received \$2,509.00 in disability income per month. Doc. #47, *Am. Sched. I*. Debtor is an Assistant at Paintbrush Assisted Living and earns approximately \$944.99 per month after payroll deductions. *Id.* Their combined income totaled \$3,453.99 per month. After payment of \$3,057.00 in expenses, the debtors received \$396.99 in monthly net income, which was barely sufficient to fund their \$397.00 plan payment. *Id.*, *Am. Sched. J*. No amended schedules have been filed since Decedent's death.

Reducing the combined net income by Decedent's contribution, while assuming that expenses remain unchanged, leaves an approximate monthly deficit of \$2,112.01. Though Debtor's gross income is enough to afford plan payments, Debtor does not appear to be able to afford both the plan payments and living expenses based on the current schedules.

Debtor's declaration and the motion do not address whether continued administration of the case is possible. Though Debtor's income may have increased, and expenses may have decreased since the last schedules were filed, no evidence of such change in net income has been presented to the court.

This matter will be called as scheduled to inquire how continued administration is possible and why this case should not be dismissed. Debtor should also promptly file *Amended Schedules I and J* with current income and expenses.

9. [22-10060](#)-B-13 **IN RE: CURTIS/CHARTOTTE ALLEN**
[MHM-3](#)

MOTION TO DISMISS CASE
6-21-2022 [\[50\]](#)

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

NO RULING.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors, under § 521 for failure to file complete and accurate schedules, and failure to disclose assets. Doc. #50. Trustee has been informed that the debtors are entitled to surplus proceeds from a pre-petition foreclosure sale totaling approximately \$130,000. Doc. #52.

Nancy D. Klepac, attorney for Curtis James Allen and Charlotte Yvette Allen ("Debtors"), timely filed a responsive declaration. Doc. #54. Ms. Klepac indicates that Debtors request an opportunity to speak with the judge directly.

On July 13, 2022, joint debtor Charlotte Allen filed a responsive declaration to request an opportunity to be heard regarding the alleged sale of their house. Doc. #60. Debtors' position is that their tangible house was not sold because their due process rights were violated, and they were "deprived of [their] 5th Amendment right under the color of law." *Id.*, ¶ 5. Ms. Allen says that she is "not a debtor but a creditor under public law." *Id.*, ¶ 6.

This matter will be called and proceed as scheduled.

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 U.S. Trustee, or any other party in interest except Debtors to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtors 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).

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 disclose assets.

Trustee's attorney, Kelsey A. Seib, declares that the Trustee was informed by Kathy Shakibi, counsel for Wright, Finlay, & Zak, that Debtors are entitled to a portion of \$130,000.00 in surplus proceeds from the pre-petition foreclosure sale of real property located at 4747 W. Ashlan Avenue, Visalia, CA 93277. Doc. #52. These proceeds were not disclosed in the schedules or statements and Debtors' proposed chapter 13 plan proposes to pay a 7% dividend to allowed unsecured claims. *Id.*

Debtors' attorney suggests that any surplus proceeds available from the foreclosure sale should go into the plan, which would allow this case to proceed with a higher dividend to unsecured claims. Doc. #54.

However, Debtors contend that their house was not sold because their due process rights were violated. Doc. #60. Debtors request that they be allowed an opportunity to be heard.

The record shows that Debtors failed to disclose \$130,000 in surplus proceeds from the January 7, 2022 pre-petition foreclosure sale of real property at 4747 W. Ashland Avenue, Visalia, CA 93277.

Additionally, Trustee has reviewed the schedules and determined that, in light of this new information, the liquidation value of this case has increased to \$120,761.34. This amount is comprised of the non-exempt equity in Debtors' bank accounts and proceeds from the trustee sale.

This matter will be called and proceed as scheduled.

10. [22-10760](#)-B-13 **IN RE: MATTHEW CRIPPEN**
[MHM-1](#)

MOTION TO DISMISS CASE
6-3-2022 [[12](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted as modified and converted.

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") moves to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and under § 521 for failure to cooperate with the Trustee by providing all required documents. Doc. #12. Trustee's attorney, Kelsey A. Seib, declares that Debtor failed to provide: (a) list of all inventory and equipment with their current values, dates of purchase, and values when purchased; (b) business tax returns; (c) bank statements; (d) balance sheets and monthly cash flow statement; (e) proof of the average sale price for Fresno County for 2021; (f) Auberry Property information; (g) deeds of trust; and (h) all income for the household, including any income for the girlfriend living with the debtor and claimed as a dependent. Doc. #14.

Matthew Lee Crippen ("Debtor") timely filed written opposition. Doc #16. Debtor says that Debtor has been in the process of gathering the documents and believes that all documents have been provided. *Id.* Debtor did not include any declarations or other admissible evidence in support of the response.

This matter will be called and proceed as scheduled to inquire whether Trustee has received the requisite documents. If so, this motion will be DENIED WITHOUT PREJUDICE. If not, this motion may be GRANTED AS MODIFIED, and the case CONVERTED TO CHAPTER 7.

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

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) and 521(a)(3) and (4) for failing to provide required documents to Trustee.

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors because Debtor has not provided required documents to Trustee. Doc. #14. Debtor's response indicates that he has provided these documents to Trustee, but no admissible evidence has been provided in support of the same. Doc. #16.

In addition to the delinquency, Trustee has reviewed the schedules and determined that this case has a liquidation value of \$65,378.00, after trustee compensation, if the case were to be converted to chapter 7. Doc. #14. This liquidation value is solely comprised of non-exempt, unencumbered equity in Debtor's vehicles, trailers, and cash on hand. Thus, conversion, rather than dismissal, appears to serve the interests of creditors and the estate.

This matter will be called to confirm whether Debtor has provided the required documents to Trustee. If so, this motion will be DENIED WITHOUT PREJUDICE. If not, this motion may be GRANTED AS MODIFIED, and the case CONVERTED TO CHAPTER 7.

11. [22-10387](#)-B-13 **IN RE: MATTHEW/MARGARET TORRES**
[PD-1](#)

FURTHER SCHEDULING CONFERENCE RE: OBJECTION TO CONFIRMATION
OF PLAN BY THE BANK OF NEW YORK MELLON
5-3-2022 [[31](#)]

THE BANK OF NEW YORK MELLON/MV
GABRIEL WADDELL/ATTY. FOR DBT.
BRYAN FAIRMAN/ATTY. FOR MV.

NO RULING.

The Bank of New York Mellon f/k/a The Bank of New York as Trustee for CWHEQ Home Equity Loan Asset Backed Certificates, Series 2006-S6 ("Creditor") objected to Matthew Torres' and Margaret Rose Torres' ("Debtors") *Chapter 13 Plan* dated March 11, 2022 ("Plan"). Doc. #31.

Creditor contended that that the Plan fails to pay the full amount owed under the note because the interest rate proposed by the Plan is not fair, equitable, and fails to implement the prime-plus formula outlined in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). *Id.*; cf. Proof of Claim No. 24-1.

This objection was previously continued so that the parties could determine the appropriate interest rate to be paid on account of the Creditor's claim. Docs. #43; #45.

Since then, the parties jointly stipulated to resolve the objection. Doc. #47. Creditor's claim will be paid through the plan as a Class 2(A) claim in the amount of \$24,976.46 at 4.75% interest with monthly dividend payments of \$468.48. This provision will be incorporated into the order confirming the plan and the parties will bear their own fees and costs.

However, the stipulation has not been approved as to form by the chapter 13 trustee. This objection will be called as scheduled to inquire whether the trustee consents to this stipulation. If so, the objection will be concluded and removed from calendar as resolved by stipulation. The parties are directed to lodge a stipulation approved as to form by trustee for court approval.

12. [21-12289](#)-B-13 **IN RE: DUSTIN/MIRANDA WHEELER**
[SL-3](#)

MOTION TO MODIFY PLAN
6-10-2022 [\[40\]](#)

MIRANDA WHEELER/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 24, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

Dustin Wheeler and Miranda Wheeler ("Debtors") seek confirmation of the *First Modified Chapter 13 Plan* dated June 10, 2022 ("Plan"). Doc. #40. The Plan provides that Debtor will pay \$10,800.00 to Trustee by June 30, 2022, and then the payment will be \$2,495.00 starting in July 2022 through the end of the Plan, with a 100% dividend to allowed, non-priority unsecured claims. Doc. #45. In contrast to the *Chapter 13 Plan* dated September 27, 2021, confirmed November 12, 2022, the Plan provides for a \$1,295.00 increase in monthly plan payments while paying the same dividend to unsecured claims. Cf. Docs. #3; #22.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(1) because the plan fails to comply with other applicable provisions of the Bankruptcy Code. Doc. #47. Namely, the Plan proposes to reclassify Freedom Mortgage Corporation from Class 4 to Class 1 by adding the following provision:

The regular mortgage payments that the debtors mistakenly made directly to Freedom Mortgage Corporation in months 1 through 9 after the filing of the Chapter 13 bankruptcy case are hereby approved. This relates to Section 2.01 and to Section 3.07, Class 1 of Debtors' First Modified Plan, and to Section 2.01 and to Section 3.10, Class 4 of Debtors' Original Chapter 13 Plan.

Doc. #45. Trustee says that Debtors have failed to provide any evidence as to the payments that have been made. Doc. #47. Without such evidence, Trustee will be unable to prepare a *Notice of Final Cure* at the end of the case unless all post-petition mortgage payments have been made. Therefore, Trustee requests that Debtors provide proof of all post-petition mortgage payments.

The motion will be CONTINUED to August 24, 2022 at 9:30 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtors shall file and serve a written response not later than August 10, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by August 17, 2022.

If the Debtors elect to withdraw this 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 August 17, 2022. If the Debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

13. [22-10895](#)-B-13 **IN RE: LISA YOUNG**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
7-1-2022 [\[12\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 24, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to the confirmation of Lisa Renee Young's ("Debtor") *Chapter 13 Plan* dated May 26, 2022 under 11 U.S.C. § 1325(a)(9) because Debtor has not filed all applicable tax returns. Doc. #12. On July 1, 2022, Trustee received correspondence from the Internal Revenue Service that Debtor failed to file 2018 Federal Tax Returns. *Id.* However, no admissible evidence nor copies of this correspondence have been provided.

Though not required, Debtor filed written opposition. Doc. #15. Debtor claims to have testified at the § 341 meeting of creditors that the 2018 tax returns were filed. *Id.* But Debtor also has not provided any admissible evidence nor copies of the tax returns.

This objection will be CONTINUED to August 24, 2022 at 9:30 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtor shall file and serve a written response not later than August 10, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence, such as copies of the 2018 tax returns, to support the Debtor's position. Trustee shall file and serve a reply, if any, by August 17, 2022. The reply should include admissible evidence, such as correspondence with the Internal Revenue Service.

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 August 17, 2022. If the Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated without a further hearing.

14. [18-12897](#)-B-13 **IN RE: JENNIFER SHELL**
[PK-4](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
6-22-2022 [\[62\]](#)

PATRICK KAVANAGH/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.

Patrick Kavanagh ("Applicant"), attorney for Jennifer Anne Shell ("Debtor"), seeks final compensation in the sum of \$1,590.00. Doc. #62. This amount consists of \$1,590.00 in fees as reasonable compensation and \$0.00 in expenses from November 15, 2018 through case closing. *Id.*

Debtor executed a statement dated June 23, 2022 stating that Debtor has reviewed the fee application and has no objections. Doc. #67.

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) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the UST, 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.

Debtor filed chapter 13 bankruptcy on July 18, 2018. Doc. #1. The *First Modified Chapter 13 Plan* dated July 5, 2019, confirmed October 8, 2019, is the operative plan in this case. Docs. #51; #61. Section 3.05 provides that Applicant was paid \$1,194.00 prior to filing the case and, subject to court approval, an additional \$4,806.00 shall be

paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329, 330, and Rule 2002, 2016, and 2017. The *Disclosure of Compensation of Attorney for Debtor(s)* Form 2030, and *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys* Form EDC 3-096 provide that Applicant was paid \$1,194.00 pre-petition and \$4,806.00 will be paid through the plan. Docs. #1; #3. Additionally, Debtor paid the \$310.00 filing fee.

This is Applicant's second and final fee application. On December 14, 2018, the court authorized payment of fees and expenses totaling \$5,160.00. Doc. #38. After Application of \$750.00 held in trust pursuant to a settlement with LVNV Funding, LLC for attorney's fees and the \$1,194.00 retainer, the trustee was authorized to pay Applicant \$3,216.00 through the plan. *Id.*; see also Doc. #27. Therefore, it appears that \$1,590.00 remains in the plan for payment of attorney fees.

Applicant limited fees here to **\$1,590.00**, even though Applicant provided 12.10 hours of legal services at a rate of \$300.00/hour, totaling \$3,150.00 in fees. Applicant also waived all expenses.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) eliminating two claims totaling \$13,000 (PK-1); (2) successfully modifying the chapter 13 plan (PK-3); (3) finalizing the first interim fee application (PK-2); and (4) preparing and filing this fee application (PK-4). The court finds the services and expenses actual, reasonable, and necessary.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$1,590.00 in fees on a final basis under 11 U.S.C. § 330. Trustee will be authorized to pay Applicant \$1,590.00 in accordance with the confirmed plan for services rendered to the estate from November 15, 2018 through case closing. Additionally, the court will approve on a final basis the interim \$5,160.00 awarded on December 14, 2018. The total amount of compensation in this case is \$6,750.00.

11:00 AM

1. [17-14112](#)-B-13 IN RE: ARMANDO NATERA
[20-1035](#) [WEW-3](#)

MOTION FOR LEAVE TO FILE FIRST AMENDED THIRD-PARTY COMPLAINT
5-25-2022 [[294](#)]

NATERA V. BARNES ET AL
WILLIAM WINFIELD/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 hearing.

Third-Party Plaintiffs Richard Barnes, individually and as Trustee of the Richard Allen Barnes Trust dated September 1, 2011 ("Barnes"), and Parker Foreclosure Services, LLC ("Parker Foreclosure") move for leave to file its proposed *First Amended Third-Party Complaint* under Federal Rule of Civil Procedure ("Civ. Rule") 15(a)(2), Federal Rule of Bankruptcy Procedure ("Rule") 7015, and Local Rule of Practice ("LBR") 7015-1. Doc. #294. The *First Amended Third-Party Complaint* adds more specific allegations to the Negligence and Negligent Representation causes of action, removes the causes of action for Abstractor Negligence and Breach of Oral Contract, and adds a cause of action for Equitable Indemnity. Barnes and Parker Foreclosure included clean and redlined versions of the proposed amended complaint in compliance with LBR 7015-1. Doc. #296, *Exs. A, B*.

Third-Party Defendant WFG National Title Insurance Company ("WFG") timely filed written opposition. Doc. #308.

Barnes and Parker Foreclosure replied. Doc. #309.

This matter will be called and proceed as scheduled. The court is inclined to GRANT this motion.

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 any party in interest except WFG 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 motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of all parties in interest except WFG 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).

Civ. Rule 15(a), incorporated by Rule 7015, permits a party to amend its pleading once as a matter of course within 21 days after serving it, 21 days after service of a responsive pleading, or 21 days after a motion under Civ. Rule 12(b), (e), or (f), whichever is earlier. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. "The court should freely give leave when justice so requires." Civ. Rule 15(a)(2). The Ninth Circuit has stated that "[Civ. R]ule 15's policy of favoring amendments should be applied with 'extreme liberality.'" *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987), quoting *U.S. v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981).

Courts should consider four factors in determining whether to grant leave to amend a complaint: bad faith, undue delay, prejudice to the opposing party, and futility of the amendments. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Prejudice to the opposing party is the strongest factor. In the absence of prejudice, or a "strong showing" of the other factors, "[t]here is a presumption that leave to amend should be granted." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003); *Shaw v. Burke*, No. 17-cv-2386, 2018 WL 2459720, at *3 (C.D. Cal. May 1, 2018).

Barnes and Parker Foreclosure contend that the *First Amended Third-Party Complaint* is proposed in good faith and not for the purposes of delaying or avoiding an adverse judgment, is timely and will not cause undue delay, and will not prejudice WFG. Doc. #294.

In response, WFG argues that that Barnes and Parker Foreclosure have unduly delayed in filing this motion, their claims are futile, and WFG has been prejudiced. Doc. #308. Barnes and Parker Foreclosure filed a reply. Doc. #309.

First, WFG argues that Barnes and Parker Foreclosure have known about their potential claims against WFG since June 5, 2020, when debtor Armando Natera filed this adversary proceeding. Now, more than two years later, Barnes and Parker Foreclosure are attempting to inject new theories of recovery after the court partially granted WFG's motion to dismiss by adding a cause of action for Equitable Indemnity. Since this delay is egregious and unexplained, WFG argues the motion should be denied. *Id.*, citing *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 953 (9th Cir. 2006).

There has not been undue delay. WFG has challenged Barnes and Parker Foreclosure's *Third-Party Complaint* under Civ. Rule 12(b)(6) (Rule 7012). The court has partially granted WFG's motion. But undue delay by itself, even if present, is insufficient to justify denying a motion to amend. *Bowles v. Reade*, 198 F.3d 752, 758 (9th Cir. 1999) (cited by WFG).

What's more, WFG's argument assumes *new facts* have been alleged in the proposed *First Amended Third-Party Complaint* that were known by Barnes and Parker Foreclosure and unknown by WFG until now or contradicted previous pleadings by Barnes and Parker Foreclosure Services. That is not the case. Another case cited by WFG describes the analysis necessary when evaluating claims of undue delay. "In evaluating undue delay, we also inquire whether the moving party knew or should have known the facts and theories raised by the amendment in the original pleading." *AmerisourceBergen Corp. v Dialysis West, Inc.*, 465 F.3d 946, 953 (9th Cir. 2006).

The facts and theories relied upon by Barnes and Parker Foreclosure Services have been plead at the outset. The addition of the Equitable Indemnity claim based on the same facts previously alleged supports the lack of undue delay. It is undisputed that this motion was filed promptly after WFG refused to stipulate to allow the amendment.

Second, WFG contends that the motion should be denied because the amendment is futile. *Id.*, citing *Carrico v. City & County of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011). Since Barnes and Parker Foreclosure are limited to the terms of the Trustee's Sale Guarantee, a limited contract of indemnity from a title insurance carrier to the stated assured, their recovery will be limited to the terms stated in Trustee's Sale Guarantee ("TSG"). Therefore, WFG says any amendment is futile and the motion may be denied.

WFG provides no authority for the position that the TSG insulates WFG from liability for the alleged representations involved here. Assuming WFG is correct, and a TSG is a "limited contract of indemnity from the title company to the named assured," (Doc. #308) that does not mean the alleged representations made to Barnes and Parker Foreclosure under the circumstances alleged did not occur, are irrelevant, or should not have been relied upon.

This proposed *First Amended Third-Party Complaint* omits claims based on contractual and abstractor theories. The claim proposes Negligence, Negligent Misrepresentation, and Equitable Indemnity theories, only.

This distinguishes this case from that cited by WFG. *Carrico*, 656 F.3d at 1008 (holding plaintiff's failure to present specific allegations rectifying lack of standing and requesting leave to amend as an afterthought suggests an amendment would be futile).

Lastly, WFG argues that it will be prejudiced by the amendment. WFG has spent a considerable amount of time and attorney's fees in filing its motion to dismiss the *Third-Party Complaint*. Rather than accepting the ruling on that motion, Barnes and Parker Foreclosure have added a new cause of action, which will require WFG to spend additional time and attorney fees to defend. Further, Barnes and Parker could have

amended the original complaint as a matter of right after WFG filed its motion to dismiss, but they failed to do so.

The court is unpersuaded. "Prejudice requires more than simply having to litigate the merits of, or to pay, a claim - there must be some legal detriment to the party opposing [the amendment]." *Wall St. Plaza, LLC v. JSJF Corp.*, 344 B.R. 94, 102 (B.A.P 9th Cir. 2006), *aff'd and remanded* 277 F. App'x. 718 (9th Cir., 2008).

WFG's argument assumes additional facts or contradictory positions have been alleged by Barnes and Parker Foreclosure. As noted above, that is simply not the case. WFG generically claims it is prejudiced by having to defend a new claim. How? The claim incorporates the allegations presented before. There is no proof that substantial discovery will need to commence. Indeed, it is unclear what status trial preparation is in this case given the unsettled pleadings thus far.

As for Barnes and Parker Foreclosure's declining to file an amended *Third-Party Complaint* when faced with the previous dismissal motion, that is a strategic choice just as it was WFG's to file the dismissal motion and this opposition to the motion to amend. No legal detriment results.

WFG's authorities are distinguishable. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (reversing a district court's dismissal of a complaint without leave to amend since the district court did not apply the *Foman* factors); *AmerisourceBergen Corp.*, 465 F. 3d at 953 (proposed amendment included contradictory facts compared to previous pleadings).

This matter will be called and proceed as scheduled. For the foregoing reasons, the court is inclined to GRANT the motion.

2. [17-10236](#)-B-13 **IN RE: PAUL/KATHLEEN LANGSTON**
[21-1043](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-23-2021 [\[1\]](#)

LANGSTON ET AL V. CALIFORNIA
DEPARTMENT OF DEVELOPMENTAL
GABRIEL WADDELL/ATTY. FOR PL.
DISMISSED 6/23/22

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

DISPOSITION: Concluded.

ORDER: The court will issue an order.

Pursuant to the parties' stipulation, the plaintiffs dismissed this case on June 23, 2022 by filing a *Notice of Dismissal of Adversary Proceeding*. Accordingly, this status conference will be CONCLUDED and removed from calendar because the case has already been dismissed.

3. [17-10236](#)-B-13 **IN RE: PAUL/KATHLEEN LANGSTON**
[21-1043](#) [FW-1](#)

CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT
3-4-2022 [[19](#)]

LANGSTON ET AL V. CALIFORNIA
DEPARTMENT OF DEVELOPMENTAL
GABRIEL WADDELL/ATTY. FOR MV.
DISMISSED 6/23/22

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion was continued because the parties had reached an agreement to settle the adversary proceeding and needed additional time to reduce the settlement to a written contract. Docs. #32; #34. Since then, the plaintiffs dismissed this case by filing a *Notice of Dismissal of Adversary Proceeding* on June 23, 2022. Doc. #42. Accordingly, this motion will be DENIED AS MOOT because the case has already been dismissed.

4. [13-11337](#)-B-13 **IN RE: GREGORY/KARAN CARVER**
[22-1001](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY
PROCEEDING FOR FAILURE TO PROSECUTE
6-2-2022 [[27](#)]

CARVER ET AL V. SETERUS INC.
ET AL
RESPONSIVE PLEADING

NO RULING.

The Clerk entered a *Reissued Summons and Notice of Status Conference in an Adversary Proceeding* ("Reissued Summons") on March 8, 2022. Doc. #8. Debtors Gregory Thomas Carver and Karan Ann Carver ("Plaintiffs") served the Reissued Summons on defendants Nationstar Mortgage, LLC dba Mr. Cooper ("Nationstar") and Gregory Funding, Inc.

("Gregory Funding") on March 9, 2022. Doc. #10. Defendant Seterus, Inc. ("Seterus") was not served.

Under Rule 7012, the 30-day deadline for Nationstar and Gregory Funding to file an answer or other responsive pleading was April 7, 2022.¹

Due to inaction, the court issued this *Order to Show Cause* ("OSC") why this adversary proceeding should not be dismissed for lack of prosecution and for failure to follow court orders under Civ. Rule 41(b) (incorporated by Rule 7041) on June 2, 2022. Doc. #27.

Plaintiffs timely responded to the OSC and requested entry of default for Nationstar, Gregory Funding, and Seterus. Docs. ##30-33.

The court entered the defaults of Nationstar and Gregory Funding. Docs. #35-36. However, the court issued a memorandum regarding failure to properly serve Seterus. Doc. #34. Nationstar appears to have acquired certain rights and liabilities of Seterus in February 2019, but another company - Kyanite, Inc., now terminated - appears to be the successor in interest to any remaining rights or liabilities. No evidence has been provided to document whether the current owner or assignee of Seterus' liability in this adversary proceeding was properly served.

On July 18, 2022, Plaintiffs dismissed Seterus and Does 1-10 from the adversary proceeding with prejudice. Doc. #43.

This matter will be called and proceed as scheduled.

¹ References to "Civ. Rule" are to the Federal Rules of Civil Procedure, and "Rule" are to the Federal Rules of Bankruptcy Procedure.