



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, July 27, 2022
Place: Department B – Courtroom #13
Fresno, California**

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

Post-Publication Changes: The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:30 AM

1. [22-10815](#)-B-13 **IN RE: CHRISTOPHER HUGHES**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
6-17-2022 [[17](#)]

MICHAEL MEYER/MV
STEVEN ALPERT/ATTY. FOR DBT.

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DISPOSITION: Withdrawn; removed from calendar.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 21, 2022. Doc. #36. Accordingly, this motion will be removed from calendar.

2. [19-10721](#)-B-13 **IN RE: JOSE LEON**
[MHM-1](#)

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7
6-1-2022 [[19](#)]

STEPHEN LABIAK/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") seeks to convert the chapter 13 bankruptcy case of Jose Luis Leon ("Debtor") to chapter 7 for "cause" under 11 U.S.C. § 1307(c). Doc. #19. Trustee alleges that cause exists to convert or dismiss because Debtor failed to disclose pre-petition claims and receipt of a combined \$45,000 in post-petition settlement proceeds. Trustee alleges bad faith and claims that the best interests of creditors and the estate favor conversion over dismissal. *Id.*

Debtor timely opposed and filed motion to voluntarily dismiss under 11 U.S.C. § 1307(b). Docs. #25; #27. The court set the dismissal motion for hearing in matter #3 below, and, in matter #4 below, issued an *Order to Show Cause* why the court should not enjoin Debtor from filing

a petition for relief under any chapter of the Bankruptcy Code in this District for a period of two years without first obtaining written permission from the Chief Bankruptcy Judge of the Eastern District of California. Doc. #44; *cf.* SLL-1.

Debtor has an absolute right to dismiss under 11 U.S.C. § 1307(b) provided that the case has not been previously converted. *Nichols v. Marana Stockyard & Livestock Mkt., Inc. (In re Nichols)*, 10 F.4th 956, 964 (9th Cir. 2021). This case has not been previously converted, so it will be dismissed in matter #3 below, and the court will determine whether to impose any consequences of dismissal in matter #4 below.

Accordingly, Trustee's motion to convert will be DENIED AS MOOT because the case will be dismissed with a bar to refiling below.

3. [19-10721](#)-B-13 **IN RE: JOSE LEON**
[SLL-1](#)

MOTION TO DISMISS CASE
6-14-2022 [[27](#)]

JOSE LEON/MV
STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Granted; the court retains jurisdiction to determine the *Order to Show Cause* in matter #4 below.

ORDER: The court will issue an order.

Jose Luis Leon ("Debtor") filed this *ex parte* motion to voluntarily dismiss this case pursuant to 11 U.S.C. § 1307(b) in response to chapter 13 trustee Michael H. Meyer's ("Trustee") motion to convert case from chapter 13 to chapter 7 in matter #2 above. Doc. #27; *cf.* MHM-1.

Since Trustee alleges bad faith and egregious conduct in his motion to convert, the court set this motion for hearing and issued an *Order to Show Cause* ("OSC") why the court should not enjoin Debtor from filing a petition for relief under any chapter of the Bankruptcy Code in this District for a period of two years without first obtaining written permission from the Chief Bankruptcy Judge of the Eastern District of California. Doc. #44. The OSC is the subject of matter #4 below.

Debtor timely filed non-opposition to the OSC on July 5, 2022. Doc. #49. No other party in interest responded.

This motion will be GRANTED, and the case will be dismissed. The court retains jurisdiction to determine the outcome of the OSC in matter #4

below.

The OSC set this motion to dismiss for hearing on 28 days' notice under Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Debtor moves to voluntarily dismiss this case under 11 U.S.C. § 1307(b). Debtor has an absolute right to dismiss under § 1307(b) provided that the case has not been previously converted. *Nichols v. Marana Stockyard & Livestock Mkt., Inc. (In re Nichols)*, 10 F.4th 956, 964 (9th Cir. 2021). This case has not been previously converted, so it may be dismissed, but Debtor does not have the right to dismiss *without prejudice*.

Since Trustee has alleged bad faith, the court issued an OSC in matter #4 below. Docs. #19; #44. The motion will be GRANTED, and the case will be DISMISSED, but the court retains jurisdiction to determine the outcome of the OSC.

4. [19-10721](#)-B-13 **IN RE: JOSE LEON**
[SLL-1](#)

ORDER TO SHOW CAUSE
6-21-2022 [[44](#)]

STEPHEN LABIAK/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Debtor is barred from refiling any bankruptcy under any chapter in this District for a period of two years without first obtaining written permission from the Chief Bankruptcy Judge of the Eastern District of California.

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

Jose Luis Leon ("Debtor") filed an *ex parte* motion to voluntarily dismiss this case pursuant to 11 U.S.C. § 1307(b) in response to chapter 13 trustee Michael H. Meyer's ("Trustee") motion to convert

case from chapter 13 to chapter 7 in matters ##2-3 above. Doc. #27;
cf. MHM-1.

Since Trustee alleged bad faith and egregious conduct in his motion to convert, the court set this motion for hearing and issued an *Order to Show Cause* ("OSC") why the court should not enjoin Debtor from filing a petition for relief under any chapter of the Bankruptcy Code in this District for a period of two years without first obtaining written permission from the Chief Bankruptcy Judge of the Eastern District of California. Doc. #44.

Debtor timely filed non-opposition to the OSC on July 5, 2022.
Doc. #49.

No other party in interest responded.

This matter will be called and proceed as scheduled. The court will GRANT the motion to dismiss, dismiss the case, and impose a two-year bar to refiling without first obtaining written permission from the Chief Bankruptcy Judge of the Eastern District of California.

The OSC set this motion to dismiss for hearing on 28 days' notice under Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the OSC. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

As noted above, Trustee sought to convert this case in matter #3 above. MHM-1. Trustee alleged that cause exists to convert or dismiss because Debtor failed to disclose pre-petition claims and receipt of a combined \$45,000 in post-petition settlement proceeds. Doc. #21. Trustee contended that Debtor knew or should have known about both pre-petition claims on the petition date, and failure to disclose either claim before or after liquidation is evidence of bad faith. Doc. #19.

Debtor filed a response and a motion to dismiss this case under § 1307(b), which is the subject of matter #3 above. Docs. #25; #27. Since Debtor has an absolute right to dismiss under § 1307(b) provided that the case has not been previously converted, the court is granting the motion and dismissing the case. *See, Nichols v. Marana Stockyard & Livestock Mkt., Inc. (In re Nichols)*, 10 F.4th 956, 964 (9th Cir. 2021). However, Debtor does not have the absolute right to dismiss *without prejudice*, so the order dismissing the case will retain jurisdiction to determine the outcome of this OSC.

11 U.S.C. § 105(a) allows the court to issue an order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. The court is not precluded from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement orders, rules, or to prevent an abuse of process. § 105(a).

11 U.S.C. § 349(a) affords the court judicial discretion to impose a variety of consequences of dismissal. *In re Duran v. Rojas*, 630 B.R. 797, 809 (B.A.P. 9th Cir. 2021). For "cause," the court may "order otherwise" to impose in a dismissal a prohibition on the discharge of any debt that could have been discharged in the dismissed case or an injunction from filing future bankruptcy petitions. *Ibid.*; § 349(a).

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

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

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

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

Based on the record, it appears that Debtor filed this bankruptcy case in bad faith and unfairly manipulated the Bankruptcy Code by misrepresenting assets and income. Trustee has produced evidence that Debtor filed a claim for lost wages with the California Labor Commissioner, Case No. WC-CM-365668 ("Labor Claim"), against Calstate Recycling, Inc., a California Corporation ("Calstate Recycling") on or about October 13, 2017. Docs. #21; #22, Ex. A. The Labor Claim was reduced to a \$15,204.07 judgment on or about September 24, 2018. *Id.*, at 3.

Thereafter, Debtor filed chapter 7 bankruptcy on February 28, 2019 and did not disclose the Labor Claim, the judgment, nor any other unliquidated claims against third parties. Doc. #1, *Sched. A/B*, ¶ 33; *stmt. Fin. Affairs*, Part 4. On April 22, 2019, Debtor received \$10,000 from Calstate Recycling to resolve the Labor Claim judgment. Doc. #22, *Ex. B*. Debtor did not amend the schedules to disclose receipt of this post-petition payment.

Additionally, on or about June 10, 2019, Debtor obtained a right to sue letter from the Department of Fair Employment & Housing and filed a complaint in Kings County Superior Court, Case NO. 19C-0222 ("Discrimination Claim"), against Calstate Recycling, Hector Garcia Avila individually, and DOES 1 through 100. *Id.*, *Ex. C*. The Discrimination Claim complaint sought damages suffered between January 9, 2017 and October 27, 2017 for (1) harassment, (2) discrimination, (3) failure to take steps to prevent harassment, discrimination, and retaliation, and (4) retaliation. *Id.* Sometime thereafter, Debtor settled the Discrimination Claim for \$35,000. Doc. #21. Given the sensitive nature of the settlement, it is not available for public viewing and Trustee will make a copy available to the court upon request. *Id.* Under the terms of the settlement, Debtor was to receive a lump sum payment of \$17,000 not later than November 1, 2021, and nine monthly payments of \$2,000 beginning December 1, 2021 until the remaining the \$18,000 is paid in full. *Id.*

Since Debtor knew about the Labor and Discrimination Claims pre-petition, filed the Labor Claim pre-petition and the Discrimination Claim post-petition, entered into unauthorized settlement agreements for both Claims post-petition, and received undisclosed, post-petition payments for both Claims pursuant to those settlements, Trustee believes that this case was filed in bad faith under the totality of the circumstances test. Doc. #19.

Lastly, Debtor's *Chapter 13 Plan* dated February 28, 2019 provides for 60 monthly payments of \$1,485 and is premised on Debtor's inability to pay more than a 4.830% dividend to allowed, non-priority unsecured claims. Docs. #2; #14. *Schedules I and J* indicate that Debtor earns \$3,009/month in income and incurs \$1,524/month in expenses, leaving him with exactly \$1,485 in monthly net income. Doc. #1. But *Schedule A/B* and the *Statement of Financial Affairs* omit the Claims and receipt of any settlement funds on account of the Claims. *Id.* Therefore, Debtor has greater assets and monthly net income than disclosed, has misrepresented his financial condition in this case, and has engaged in egregious conduct by endeavoring to thwart creditors' right to a fair and equitable distribution.

In response to the OSC setting forth the above allegations and ordering Debtor to show cause why the court should not impose a two-year bar to refiling any bankruptcy under any chapter in this District without first obtaining written permission from the Chief Bankruptcy Judge of the Eastern District of California, Debtor filed a statement of non-opposition. Doc. #49.

Therefore, the court finds that this case was filed in bad faith under the totality of the circumstances test. Debtor engaged in egregious conduct, misrepresented facts in the petition and plan by failing to disclose assets and income, unfairly manipulated the Bankruptcy Code, and filed the petition and plan in an inequitable manner.

Accordingly, the court will issue an order enjoining Debtor from filing a petition for relief under any chapter of the Bankruptcy Code in this District for a period of two years without first obtaining written permission from the Chief Bankruptcy Judge of the Eastern District of California.

5. [18-11141](#)-B-13 **IN RE: ELENA HARPER**
[WLG-1](#)

MOTION TO MODIFY PLAN
6-22-2022 [[137](#)]

ELENA HARPER/MV
NICHOLAS WAJDA/ATTY. FOR DBT.

NO RULING.

Elena Janel Harper ("Debtor") seeks an order confirming the [*Second Amended*] *Chapter 13 Plan* dated June 22, 2022. Doc. #137. The 60-month plan with a 3.06% dividend to allowed, non-priority unsecured claims proposes that Debtor shall pay:

- a. \$1,727.71/month for 13 months (April 2018 - April 2019);
- b. \$1,734.89/month for 13 months (May 2019 - May 2020);
- c. \$1,681.59/month for 10 months (June 2020 - March 2021);
- d. \$708.61/month for 5 months (April 2021 - August 2021);
- e. \$1,734.02/month for 9 months (September 2021 - May 2022);
- f. \$0.00 for 1 month (June 2022); and
- g. \$2,372.21/month for 9 months (July 2022 - March 2023).

Doc. #141. In contrast to the operative *Chapter 13 Plan* dated March 28, 2018, confirmed August 2, 2018, the proposed plan modifies the monthly payment from \$1,690/month for 60 months and increases the dividend from 1% to allowed, non-priority unsecured claims. Docs. #5; #58.

This matter will be called and proceed as scheduled because the motion does not comply with the Local Rules of Practice ("LBR"). This motion was set for hearing on 35 days' notice as required by LBR 3015-1(d)(2). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir.

1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

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

Here, on July 16, 2018, Debtor filed a motion to confirm the *First Amended Chapter 13 Plan* dated the same, which was set for hearing on September 6, 2018. Doc. #43. That motion was withdrawn on July 27, 2018 and the hearing was removed from calendar on September 6, 2018. Docs. #56; #60. The DCN for that motion was WLJ-1.

On June 22, 2022, Debtor filed this motion to modify plan. Doc. #137. The DCN for this motion is also WLJ-1 and therefore it does not comply with the local rules. Since this is a separate motion on a separate plan, it is a separate matter that should have contained a different DCN.

Second, the *Notice of Hearing* does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Doc. #138.

The procedural defects above warrant denial without prejudice of this motion. When a bankruptcy court operates within its local rules, there is no abuse of discretion in application of those rules. *In re Thao Tran Nguyen*, 447 B.R. 268, 281 (B.A.P. 9th Cir. 2011) (*en banc*).

However, this case is subject to a *Conditional Order Granting Motion for Relief from Automatic Stay* ("Conditional Order") entered June 13, 2022. Doc. #135. The Conditional Order provides that Debtor has until August 8, 2022 to file and obtain confirmation of a modified plan to resolve the existing post-petition default owed to Freedom Mortgage Company ("Creditor"), or Creditor will have relief from the automatic stay with respect to Debtor's residence at 3017 McCall Avenue, Bakersfield, CA 93304 ("Property"). *Id.* But if Debtor timely obtains confirmation, then the Conditional Order shall be denied as moot. Therefore, if this motion is denied for the procedural reasons above, Creditor will have stay relief to proceed against Debtor's residence.

LBR 1001-1(f) allows the court *sua sponte* to modify provisions of the LBR not inconsistent with the Federal Rules of Bankruptcy Procedure ("Rule") to accommodate the needs of a particular case or proceeding. Rule 1001 states that "[t]hese rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding."

Here, no party in interest has filed any opposition to Debtor's modified plan and there is a conditional stay relief order under which Debtor may lose her residence if this motion is denied. This prejudice to Debtor for her attorney's procedural error warrants modification of the local rules to suspend LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) in this instance only.

Under LBR 1001-1(g), failure of counsel to comply with the LBR, Rules, the Federal Rules of Civil Procedure, or any order of the court may be grounds for imposition of any and all sanctions authorized by statute or rule, or within the inherent power of the court. Counsel is advised to review the local rules and ensure procedural compliance in all subsequent matters.

This matter will be called and proceed as scheduled. If granted, any confirmation order shall include the docket control number of the motion and shall reference the plan by the date it was filed.

6. [18-14143](#)-B-13 **IN RE: DAVID/CARLA LOWERY**
[MHM-2](#)

MOTION TO DISMISS CASE
6-27-2022 [\[48\]](#)

MICHAEL MEYER/MV
CHRISTOPHER FISHER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

The chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtors that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1) and for failure to complete the terms of the confirmed plan under 11 U.S.C. § 1307(c)(6). Doc #48. Debtors did not oppose.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the

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

The record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). 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 \$1,982.79. Doc. #50. Before this hearing, another payment in the amount of \$994.79 will also come due.

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 11 U.S.C. § 1307(c)(6) for failure to complete the terms of the confirmed plan.

In addition, the trustee has reviewed the schedules and determined that this case has a liquidation value of \$896.00 after trustee compensation if the case were converted to chapter 7. Doc. #50. This amount is comprised of the non-exempt equity in Debtor's 2008 Toyota Prius and money in the bank. *Id.* The liquidation value of this case is *de minimis*. Therefore, dismissal, rather than conversion, serves the interests of creditors and the estate.

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

7. [18-13447](#)-B-13 **IN RE: WILEY GARDNER**
[FW-3](#)

MOTION TO AVOID LIEN OF NOBLE CREDIT UNION AND/OR MOTION TO
AVOID LIEN OF CITIBANK SOUTH DAKOTA, N.A.
6-21-2022 [\[90\]](#)

WILEY GARDNER/MV
GABRIEL WADDELL/ATTY. FOR DBT.
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.

Wiley Carl Gardner ("Debtor") seeks to avoid judicial liens in favor
of the following creditors in the following amounts, and encumbering
residential real property located at 1577 West Castoro Way, Hanford,
CA 93230 ("Property"):

1. CitiBank South Dakota, N.A. ("CitiBank"): \$3,807.81;¹ and
2. Noble Credit Union ("Noble"): \$39,595.07..²

Doc. #90. Noble timely filed limited opposition. Doc. #95.

Debtor replied. Doc. #98.

No other parties in interest timely filed written opposition. This
motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the
creditors, the chapter 13 trustee, the U.S. Trustee, or any other
party in interest to file written opposition at least 14 days prior to
the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver
of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*,
46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-
mentioned parties in interest except Noble are entered. Upon default,
factual allegations will be taken as true (except those relating to
amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915,
917 (9th Cir. 1987). Constitutional due process requires that a
plaintiff make a *prima facie* showing that they are entitled to the
relief sought, which the movant has done here.

BACKGROUND

As of the petition date, Property had an approximate value of
\$300,000.00. Doc. #1, *Sched. A/B*. Debtor owns an undivided ½ (50%)

ownership interest in Property. Doc. #92. The remaining undivided $\frac{1}{2}$ (50%) interest is owned by Sharon K. Flores as an unmarried joint tenant. Docs. #92; #96, *Ex. A*.

The only unavoidable lien encumbering Property is a deed of trust in favor of Universal American Mortgage Company, LLC, which was modified on March 20, 2018 in favor of Wells Fargo Home Mortgage ("Wells Fargo") in the amount of \$219,427.08. Doc. #1, *Sched. D*; Claim 11-1, *Attach. 2*. Both Debtor and Flores are listed on the deed of trust, and both were borrowers who executed the corresponding note. *Id.*; Doc. #96, *Ex. B*. Debtor says that the amount owed on the mortgage was \$218,419.43 as of the petition date. Doc. #92; *cf.* Claim 11-1.

Debtor claimed a homestead exemption pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730 in the amount of \$75,000.00. Doc. #1, *Sched. C*.

CitiBank Judgment Lien

Judgment was entered against Debtor in favor of CitiBank in the amount of \$3,807.81 on October 18, 2011. Doc. #93, *Ex. A*. An abstract judgment was issued on October 28, 2011 and recorded in Kings County on November 10, 2011. *Id.* Debtor says that the amount owing on the CitiBank lien was \$6,417.99 on the petition date. Doc. #92.

Noble Judgment Lien

On June 4, 2018, a judgment was entered against Debtor and Sharon Flores in favor of Noble in the amount of \$39,595.07. Doc. #93, *Ex. B*. An abstract of judgment was issued on June 18, 2018 and recorded in Kings County on July 2, 2018. *Id.* Debtor says that the amount owing on the Noble lien was \$40,473.76 on the petition date. Doc. #92.

In Noble's opposition, it first notes that CitiBank's lien appears to have expired. Doc. #95. Second, Noble's lien is against both Debtor and Debtor's non-filing spouse, Sharon Flores. Debtor and Flores both own a 50% interest in Property, so Noble requests that any order avoiding its lien specifies that the order does not affect the lien against Sharon Flores. *Id.*

In reply, Debtor acknowledges that he is not entitled to any relief or avoidance of a lien encumbering property interests of parties other than Debtor. Doc. #98. Debtor does not object to limiting language in an order stating that the motion is only granted with respect to Debtor. However, Debtor will need to record a certified copy of this order with Kings County, so Debtor wishes to keep an order free of extraneous language that could be "problematic." *Id.*

Property's deed of trust and judicial liens can be summarized as follows:

Creditor	Amount	Entered	Recorded	Status
1. Wells Fargo	\$218,419.43	—	07/30/08	Unavoidable
2. CitiBank	\$6,417.99	10/18/11	11/10/11	Avoidable
3. Noble	\$40,473.76	06/04/18	07/02/18	Avoidable

Docs. #93, Exs. A, B; #96, Exs. A, B.

DISCUSSION

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

In the Ninth Circuit, the lien avoidance formula requires the deduction of all unavoidable, consensual encumbrances from the total value of the property before computing the debtor's fractional interest. *All Points Cap. Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007), citing *Wiget v. Nielsen (In re Nielsen)*, 197 B.R. 665 (B.A.P. 9th Cir. 1996). Using the *Meyer* approach, "one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)." *Meyer*, 373 B.R. at 90.

Here, both Debtor and Flores are liable on the Wells Fargo deed of trust. So, the Wells Fargo deed of trust (\$218,419.43) is subtracted from Property's total value (\$300,000.00) because Wells Fargo has a consensual encumbrance against the entire co-owned Property. The result, \$81,580.57, is the equity split between Debtor and Flores, so Debtor's one-half ownership interest in Property for the purposes of § 522(f) is \$40,790.29.

When a debtor seeks to avoid multiple liens under § 522(f)(1), the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid*.

Avoiding Noble's Judgment Lien

The Noble judgment lien was entered against Debtor and Flores on June 4, 2018, so it appears to be the most junior judgment lien and must be avoided first.

Strict application of the § 522(f)(2) formula with respect to the Noble judgment lien is as follows:

Amount of Noble's judicial lien	\$40,473.76
Total amount of unavoidable liens ³	+ \$115,627.71
Debtor's claimed exemption in Property	+ \$75,000.00
<i>Sum</i>	= \$231,101.47
Debtor's claimed value of interest absent liens	- \$150,000.00
Extent Noble's lien impairs Debtor's exemption	= \$81,101.47

Meyer, 373 B.R. at 91. Thus, there is insufficient equity to support Noble's judicial lien, so its fixing impairs Debtor's exemption in Property and will be avoided.

Avoiding CitiBank's Judgment Lien

After avoiding the Noble judgment lien, the CitiBank judgment lien entered on October 18, 2011 becomes the most junior judgment lien. Noble contends that it may have expired. Doc. #95. However, the CitiBank judgment appears to still be enforceable.

CCP § 683.020 defines a 10-year period in which a judgment may be enforced:

[U]pon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property:

- (a) The judgment may not be enforced.
- (b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease.
- (c) Any lien created by an enforcement procedure pursuant to the judgment is extinguished.

C.C.P. § 683.020. The judgment was entered October 18, 2011. Absent tolling, the judgment would have expired on October 18, 2021 - 3,653 days later.⁴ The 10-year renewal period ran for 252 days (with 3,401 days remaining) from October 18, 2011 to June 26, 2012, when Debtor filed a chapter 7 bankruptcy. See Case No. 12-15695.

On filing that bankruptcy, Debtor triggered the automatic stay. 11 U.S.C. § 362(a) precludes creditors from renewing judgments while the automatic stay is in effect, so CitiBank was unable to renew the judgment during this time. *Spiertos v. Moreno (In re Spiertos)*, 221 F.3d

1079, 1080 (9th Cir. 2000); see also, *Kertesz v. Ostrovsky*, 115 Cal. App. 4th 369, 377-78 (2004) ("The suspension of a statute of limitations for a certain period is, in effect 'time taken out,' for that period and adds the same period of time to the limitation time provided in the statute.") (internal quotation omitted), citing *Schumacher v. Worcester*, 55 Cal. App. 4th 376, 380 (1997).

Section 108(c) preserves the period of renewal while the automatic stay is in effect and the bankruptcy case is pending:

[I]f applicable nonbankruptcy law . . . fixes a period for commencing or continuing a civil action . . . and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

- (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case, or
- (2) 30 days after the notice of termination or expiration of the stay under section 362 . . . with respect to such claim.

11 U.S.C. § 108(c).

The automatic stay remained in effect until 30 days after the case was closed or dismissed. See § 362(c)(1), (c)(2). That case was closed by final decree on October 18, 2012, so the stay continued to toll the renewal period until 30 days later, which is November 17, 2012 (114 days after the petition date). As a result, the period to renew the CitiBank judgment was extended from October 18, 2021 to February 9, 2022.

Thereafter, the renewal period tolled for an additional 2,106 days: from November 17, 2012 to August 24, 2018, the day Debtor filed the instant bankruptcy (with 1,295 days remaining). In total, the renewal period has for tolled 2,358 days (approximately 6.46 years) and has 1,295 days remaining until expiration (approximately 3.54 years). That remaining time will not continue tolling until 30 days after this case has been closed or dismissed. So, the CitiBank judgment lien has not expired and may still be avoided here. Application of the § 522(f)(2) formula with respect to the CitiBank judgment lien:

Amount of CitiBank's judicial lien	\$6,417.99
Total amount of unavoidable liens ⁵	+ \$109,209.72
Debtor's claimed exemption in Property	+ \$75,000.00
<i>Sum</i>	= \$190,627.71
Debtor's claimed value of interest absent liens	- \$150,000.00
Extent CitiBank's lien impairs Debtor's exemption	= \$40,627.71

Meyer, 373 B.R. at 91. Therefore, there is insufficient equity to support CitiBank's judicial lien, so its fixing impairs Debtor's exemption in Property and will be avoided.

CONCLUSION

The § 522(f)(2) formula as applied to both Noble's and CitiBank's liens can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	\$300,000.00
Wells Fargo deed of trust	- \$218,419.43
Remaining equity	= \$81,580.57
Debtor's 50% interest	= \$40,790.29
Debtor's homestead exemption	- \$75,000.00
Remaining equity for judicial liens	= (\$34,209.72)
CitiBank's judicial lien	- \$6,417.99
Extent Debtor's exemption impaired	= (\$40,627.71)
Noble's judicial lien	- \$40,473.76
Extent exemption impaired by the above two liens	= (\$81,101.47)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support both the Noble and CitiBank judicial liens. Therefore, the fixing of both liens will be avoided.

Debtor has established the four elements necessary to avoid the Noble and CitiBank liens under § 522(f)(1). Therefore, this motion will be GRANTED. The order will be limited in scope so as to not affect the disposition of Noble's judgment lien against Sharon K. Flores.

¹ Debtor complied with Fed. R. Bankr. P. 7004(h) by serving via certified mail Sunil Garg, the CEO of CitiBank, National Association, CitiBank's succeeding institution, at its main office address on June 21, 2022. Doc. #94. CitiBank South Dakota, National Association merged into and became part of CitiBank, National Association on July 1, 2011. See FDIC Cert Nos. 7213, 23360, FDIC BankFind Suite, <https://banks.data.fdic.gov/bankfind-suite/> (visited July 20, 2022). The court may take judicial notice *sua sponte* of information published on government websites. Fed. R. Evid. 201(c)(1); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010). For the purposes of this motion, "CitiBank" refers to the interests of CitiBank, South Dakota as acquired by CitiBank, National Association.

² Debtor complied with Fed. R. Bankr. P. 7004(h) by serving via certified mail Susan Ryan, Noble's CEO, at Noble's main office address on June 21, 2022. Doc. #94.

³ This amount consists of half of the \$218,419.43 owing on the deed of trust in favor of Wells Fargo, which is \$109,209.71, plus the \$6,417.99 owing on the CitiBank judgment lien because it is unavoidable until all other liens have been avoided.

⁴ 3,653 days, rather than 3,650, to account for leap years in 2012, 2016, and 2020.

⁵ This amount consists of half of the \$218,419.43 owing on the deed of trust in favor of Wells Fargo, which is \$109,209.71.

8. [22-10060](#)-B-13 **IN RE: CURTIS/CHARTOTTE ALLEN**
[MHM-4](#)

MOTION TO DISMISS CASE
7-11-2022 [[56](#)]

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

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court converted this case to chapter 7 on July 20, 2022. Doc. #63. Accordingly, the chapter 13 trustee's motion to dismiss will be DENIED AS MOOT because the case has already been converted.

9. [22-10763](#)-B-13 **IN RE: CHRISTOPHER/HOLLY MASSEY**
[MHM-1](#)

MOTION TO DISMISS CASE
7-11-2022 [[26](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

Debtors Christopher Scott Massey and Holly Lyn Massey voluntarily dismissed this case on July 19, 2022, which was approved on July 21, 2022. Docs. ##30-31. Accordingly, this motion will be DENIED AS MOOT because the case has already been dismissed.

10. [17-13466](#)-B-13 **IN RE: SHERENE MONTES**
[FW-2](#)

MOTION TO MODIFY PLAN
6-7-2022 [\[26\]](#)

SHERENE MONTES/MV
GABRIEL WADDELL/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.

Sherene Montes ("Debtor") seeks an order confirming the *First Modified Chapter 13 Plan* dated June 7, 2022. Doc. #26. The plan provides that Debtor will make 60 monthly payments of \$308.33 with a 0% dividend to allowed, non-priority unsecured claims. Doc. #30. In contrast to the *Chapter 13 Plan* dated September 10, 2017, confirmed November 15, 2017, the proposed plan provides for the same payment and dividend as the operative plan, but adds provisions to allow Debtor to retroactively obtain approval of the settlement of her pre-petition car accident claim and seeks to make the attorney fees for Debtor's new counsel nondischargeable. *Id.*; cf. Docs. #5; #13. Approval of that settlement is the subject of matter #11 below. See FW-3. No party in interest timely filed written opposition.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

11. [17-13466](#)-B-13 **IN RE: SHERENE MONTES**
[FW-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT
6-7-2022 [[33](#)]

SHERENE MONTES/MV
GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order with a copy of the stipulation attached as an exhibit. The stipulation shall be separately filed and docketed as a stipulation.

Sherene Montes ("Debtor") requests an order approving a settlement agreement between the estate and Debtor's uninsured motorist insurance coverage pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #33.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019(a). Though 11 U.S.C. § 1303 does not expressly grant chapter 13 debtors standing to prosecute and settle claims, other courts have applied it to allow these claims to continue. The Second Circuit has stated, "we conclude that a Chapter 13 debtor, unlike a Chapter 7 debtor, has standing to litigate causes of action that are not part of a case under title 11."

Olick v. Parker & Parsley Petroleum Co., 145 F.3d 513, 515 (2d Cir. 1998)

The Second Circuit reasoned, "[t]he legislative history of § 1303, which sets out the exclusive rights of a Chapter 13 debtor, supports the holding that a Chapter 13 debtor's standing is different." *Olick*, 145 F.3d 513 at 516. "Both the House of Representatives and Senate floor managers of the Uniform Law on Bankruptcies, Pub.L. No. 95-598 (1978), stated that:

Section 1303 . . . specifies rights and powers that the debtor has exclusive of the trustees. The section does not imply that the debtor does not also possess other powers concurrently with the trustee. For example, although Section [323] is not specified in section 1303, certainly it is intended that the debtor has the power to sue and be sued."

Olick, 145 F.3d 513 at 516 citing 124 Cong. Rec. H. 11,106 (daily ed. Sept. 28, 1978) (remarks of Rep. Edwards); S. 17,423 (daily ed. Oct. 5, 1978) (remarks of Sen. DeConcini).

Ninth Circuit courts have applied *Olick's* reasoning and agreed that chapter 13 debtors "have standing to pursue claims against others when those claims belong to the bankruptcy estate because 'the reality of a filing under Chapter 13 is that the debtors are the true representatives of the estate and should be given the broad latitude essential to control the progress of their case.'" *Donato v. Metro. Life Ins. Co.*, 230 B.R. 418, 425 (N.D. Cal. 1999) (quoting *Olick*, 145 F.3d 513 at 516). The court also favorably cited the Third Circuit's reasoning that a chapter 13 debtor could continue to prosecute prepetition claims after filing because "an essential feature of a Chapter 13 case is that the debtor retains possession of and may use all the property of his estate, including his prepetition causes of action . . ." *Donato*, 230 B.R. 418 at 425 (citing *Maritime Elec. Co., Inc. v. United Jersey Bank*, 959 F.2d 1194, 1209 at n.2 (3rd Cir. 1991)).

Therefore, the debtor has standing to prosecute and settle this claim.

Here, when Debtor filed chapter 13 bankruptcy on September 10, 2017, Debtor disclosed a pre-petition claim relating a vehicle accident that occurred on September 16, 2016. Doc. #1, *Sched. A/B*, ¶ 30. Debtor was involved in a car accident with an uninsured driver, so the claim is against Debtor's uninsured motorists' coverage. Doc. #35. The original *Order Confirming Plan* filed November 15, 2017 provided that the debtor will pursue the claim, notify and provide settlement documents to the chapter 13 trustee within 10 days of receipt of the signed settlement, and seek court approval of the same. Doc. #13.

Debtor pursued the claim, and with the representation of counsel, negotiated a settlement. Doc. #35. The gross total of the settlement was \$13,200.00. *Id.* After paying Debtor's medical liens and attorney

fees, Debtor received a net of \$5,196.57, which is spread out over a series of payments after accounting for the payment of medical liens. *Id.* The payout process was lengthy due to delays caused by COVID-19 and Debtor did not understand the need to obtain court approval prior to the settlement being finalized and completely paid. *Id.* As a result, Debtor now brings this motion seeking approval of the settlement. Doc. #33.

Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. *Id.*; *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

1. Probability of Success in Litigation: Though Debtor believes that the claims related to the vehicle accident would have been successful, probability in success is far from assured and there is a significant risk that further litigation would have resulted in a smaller recovery than the settlement. Doc. #35. As a result, Debtor believes that this settlement maximizes recovery and minimizes the uncertainties of litigations. *Id.* This factor appears to support approval of the settlement.

2. Difficulty in Collection: Debtor's claim was against an insurance company, so collection of any judgment would likely not have been difficult notwithstanding other delays. This factor appears to be neutral.

3. Complexity of Litigation: Absent settlement, the litigation on the vehicle accident would have likely required significant discovery and a trial to obtain a judgment. Settling the litigation removes the uncertainty of litigation, streamlines the recovery process, and provides for an already-liquidated recovery. This factor heavily supports approval of the settlement.

4. Paramount Interests of Creditors: Debtor exempted the entirety of the net proceeds of the vehicle accident claim. Debtor filed an amended exemption with this motion to exempt the entire amount of actual net proceeds. Doc. #28, *Am. Sched. C*. Debtor still has a significant wildcard exemption remaining after this amendment, so there does not appear to be any impact on creditors as a result of the settlement. This factor weighs in favor of approval of the settlement.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the parties and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake.

Accordingly, this motion will be GRANTED. This ruling is not authorizing payment of any fees or costs associated with the litigation. Debtor shall attach a copy of the settlement agreement as an exhibit to the proposed order and shall separately file the settlement agreement and docket it as an exhibit.

12. [22-10699](#)-B-13 **IN RE: JESUS GUERRA**
[MHM-1](#)

MOTION TO DISMISS CASE
7-12-2022 [\[45\]](#)

MICHAEL MEYER/MV
HENRY NUNEZ/ATTY. FOR DBT.

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 26, 2022. Doc. #55. Accordingly, this motion will be removed from calendar.

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

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

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

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") moved 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, declared 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 said that he 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 was previously heard on July 20, 2022. Doc. #19. The court entered the defaults of all non-responding parties except Debtor and continued the matter so that Debtor could provide documents to Trustee. *Id.*; Doc. #21. 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.

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.

11:00 AM

1. [17-14112](#)-B-13 **IN RE: ARMANDO NATERA**
[FW-3](#)

CONTINUED STATUS CONFERENCE RE: MOTION FOR SUMMARY JUDGMENT
9-14-2021 [[115](#)]

GABRIEL WADDELL/ATTY. FOR DBT.
DISMISSED 01/03/2018

NO RULING.

The court is in receipt of the parties' *Joint Status Report* dated July 15, 2022. Doc. #211. The parties ask the court to rule on the pending cross motion for summary judgment (FW-3) and the motion for relief from the automatic stay (TAT-2).

After the pleadings are settled, the parties anticipate the necessity of a new scheduling order to re-open fact discovery to include WFG, to conclude the in-process depositions that were stayed during the closure of fact discovery, and to re-establish deadlines for the disclosure and taking depositions and other discovery from expert witnesses by all parties for all matters. *Id.*

The matter will be called and proceed as scheduled. The court intends to take this motion for summary judgment under submission and subsequently issue a ruling.

2. [17-14112](#)-B-13 **IN RE: ARMANDO NATERA**
[TAT-2](#)

CONTINUED PRE-TRIAL CONFERENCE RE: MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-12-2020 [[76](#)]

SANDRA WARD/MV
GABRIEL WADDELL/ATTY. FOR DBT.
THOMAS TRAPANI/ATTY. FOR MV.
DISMISSED 01/03/2018

NO RULING.

The court is in receipt of the parties' *Joint Status Report* dated July 15, 2022. Doc. #211. The parties ask the court to rule on the pending cross motion for summary judgment (FW-3) and the motion for relief from the automatic stay (TAT-2).

After the pleadings are settled, the parties anticipate the necessity of a new scheduling order to re-open fact discovery to include WFG, to conclude the in-process depositions that were stayed during the closure of fact discovery, and to re-establish deadlines for the disclosure and taking depositions and other discovery from expert witnesses by all parties for all matters. *Id.*

The matter will be called and proceed as scheduled. The court intends to take this motion for relief from the automatic stay under submission and subsequently issue a ruling.

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

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
12-23-2020 [\[92\]](#)

NATERA V. BARNES ET AL
GABRIEL WADDELL/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 28, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

On July 20, 2022, the court granted Third-Party Plaintiffs Richard Barnes' and Parker Foreclosure's motion for leave to file a *First Amended Third-Party Complaint*. Doc. #311. Third-Party Defendant WFG National Title Insurance Company ("WFG") now has the opportunity to file an answer.

In the underlying bankruptcy case, the parties filed a *Joint Status Report* dated July 15, 2022. Case No. 17-14112, Doc. #211. After the pleadings are settled, the parties anticipate the necessity of a new scheduling order to re-open fact discovery to include WFG, to conclude the in-process depositions that were stayed during the closure of fact discovery, and to re-establish deadlines for the disclosure and taking depositions and other discovery from expert witnesses by all parties for all matters. *Id.*

Since the pleadings are not settled and additional discovery is needed, the pre-trial conference will be CONTINUED to September 28, 2022 at 11:00 a.m. The parties may file a joint or unilateral pre-trial conference statement not later than 7 days before the continued pre-trial conference.

4. [17-14112](#)-B-13 **IN RE: ARMANDO NATERA**
[20-1035](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: THIRD-PARTY COMPLAINT
1-25-2022 [\[246\]](#)

NATERA V. BARNES ET AL
WILLIAM WINFIELD/ATTY. FOR PL.

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

DISPOSITION: Continued to September 28, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

On July 20, 2022, the court granted Third-Party Plaintiffs Richard Barnes' and Parker Foreclosure's motion for leave to file a *First Amended Third-Party Complaint*. Doc. #311. Third-Party Defendant WFG National Title Insurance Company ("WFG") now has the opportunity to file an answer.

In the underlying bankruptcy case, the parties filed a *Joint Status Report* dated July 15, 2022. Case No. 17-14112, Doc. #211. After the pleadings are settled, the parties anticipate the necessity of a new scheduling order to re-open fact discovery to include WFG, to conclude the in-process depositions that were stayed during the closure of fact discovery, and to re-establish deadlines for the disclosure and taking depositions and other discovery from expert witnesses by all parties for all matters. *Id.*

Since the pleadings are not settled and additional discovery is needed, the status conference will be CONTINUED to September 28, 2022 at 11:00 a.m. The parties may file a joint or unilateral status conference statement not later than 7 days before the continued status conference.

5. [17-14112](#)-B-13 **IN RE: ARMANDO NATERA**
[20-1035](#) [FW-6](#)

CONTINUED SCHEDULING CONFERENCE RE: MOTION FOR SUMMARY
ADJUDICATION
9-14-2021 [[138](#)]

NATERA V. BARNES ET AL
GABRIEL WADDELL/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 28, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

On July 20, 2022, the court granted Third-Party Plaintiffs Richard Barnes' and Parker Foreclosure's motion for leave to file a *First Amended Third-Party Complaint*. Doc. #311. Third-Party Defendant WFG National Title Insurance Company ("WFG") now has the opportunity to file an answer.

In the underlying bankruptcy case, the parties filed a *Joint Status Report* dated July 15, 2022. Case No. 17-14112, Doc. #211. After the pleadings are settled, the parties anticipate the necessity of a new scheduling order to re-open fact discovery to include WFG, to conclude the in-process depositions that were stayed during the closure of fact discovery, and to re-establish deadlines for the disclosure and taking depositions and other discovery from expert witnesses by all parties for all matters. *Id.*

Since the pleadings are not settled and additional discovery is needed, the scheduling conference will be CONTINUED to September 28, 2022 at 11:00 a.m. The parties may file a joint or unilateral scheduling conference statement not later than 7 days before the continued scheduling conference.

6. [17-14112](#)-B-13 **IN RE: ARMANDO NATERA**
[20-1035](#) [TAT-3](#)

CONTINUED SCHEDULING CONFERENCE RE: MOTION FOR SUMMARY
JUDGMENT
9-1-2021 [[124](#)]

NATERA V. BARNES ET AL
THOMAS TRAPANI/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 28, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

On July 20, 2022, the court granted Third-Party Plaintiffs Richard Barnes' and Parker Foreclosure's motion for leave to file a *First Amended Third-Party Complaint*. Doc. #311. Third-Party Defendant WFG National Title Insurance Company ("WFG") now has the opportunity to file an answer.

In the underlying bankruptcy case, the parties filed a *Joint Status Report* dated July 15, 2022. Case No. 17-14112, Doc. #211. After the pleadings are settled, the parties anticipate the necessity of a new scheduling order to re-open fact discovery to include WFG, to conclude the in-process depositions that were stayed during the closure of fact discovery, and to re-establish deadlines for the disclosure and taking depositions and other discovery from expert witnesses by all parties for all matters. *Id.*

Since the pleadings are not settled and additional discovery is needed, the scheduling conference will be CONTINUED to September 28, 2022 at 11:00 a.m. The parties may file a joint or unilateral scheduling conference statement not later than 7 days before the continued scheduling conference.