

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, August 10, 2022
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 **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [21-12702](#)-B-13 **IN RE: GABRIEL/GINA BENAVIDES**
[MHM-1](#)

MOTION TO RECONVERT CASE FROM CHAPTER 13 TO CHAPTER 7
7-7-2022 [[64](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 5, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to re-convert this case to chapter 7 for cause under 11 U.S.C. § 1307(c) for unreasonable delay by the debtors that is prejudicial to creditors and under § 1326 for failure to commence making timely plan payments. Doc. #64. Trustee's attorney, Kelsey A. Seib, declares that the debtors have failed to file *Amended Schedules I and J* or a plan as a separate document, and plan payments are delinquent \$2,900.00 through June 2022. Doc. #66. Presumably, an additional payment of \$1,300.00 will become due in July 2022. Additionally, Trustee says that the debtors agreed to pay than a 100% dividend to allowed, non-priority unsecured claims. Doc. #66.

Gabriel Benavides and Gina Michelle Benavides ("Debtors") timely responded. Doc. #68. First, Debtors separately filed the plan. Doc. #71. Second, Debtors' attorney, Patrick Kavanagh declares that he has drafted an objection to claim and will file it shortly, and Debtors will sign a modified plan and *Amended Schedules I and J* "within the next few days." Doc. #69. The motion states that the objection will result in unsecured claims totaling less than expected, so Debtors will be able to propose a confirmable, modified plan with a 100% dividend to allowed unsecured claims. Doc. #68.

Since then, Debtors filed the *First Modified Chapter 13 Plan* dated August 6, 2022 with *Amended Schedules I and J* and moved to confirm the same. See PK-4; Doc. #81. The motion to confirm the plan is set for hearing on October 5, 2022. Doc. #73. Accordingly, Trustee's motion to re-convert will be CONTINUED to October 5, 2022 at 9:00 a.m. to be heard in connection with Debtor's plan confirmation hearing.

2. [19-14017](#)-B-13 **IN RE: JOSHUA DAVIS**

ORDER TO SHOW CAUSE - FAILURE TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
7-14-2022 [\[42\]](#)

BENNY BARCO/ATTY. FOR DBT.
\$26.00 FEE PAID 7/20/22

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the fee for filing transfer of claim in the amount of \$26.00 was paid on July 20, 2022. Therefore, the *Order to Show Cause* will be vacated.

3. [21-12317](#)-B-13 **IN RE: RYAN RHOADS**
[FW-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
7-7-2022 [\[25\]](#)

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.

Gabriel J. Waddell of Fear Waddell, P.C. ("Applicant"), attorney for Ryan Christopher Rhoads ("Debtor"), seeks interim compensation in the sum of \$7,838.56 under 11 U.S.C. §§ 330-331. Doc. #25. This amount consists of \$7,519.00 in fees as reasonable compensation for services rendered and \$319.56 for reimbursement of actual, necessary expenses from May 6, 2021 through June 22, 2022. *Id.*

Debtor executed a statement dated July 7, 2022 stating that Debtor has read the application and approves the same. Doc. #27, *Ex. E*.

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". 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.

Debtor filed chapter 13 bankruptcy on September 30, 2021. Doc. #1. The *Chapter 13 Plan* dated September 30, 2021, confirmed November 12, 2021, is the operative plan in this case. Docs. #4; #16. Section 3.05 provides that Applicant was paid \$1,962.00 prior to filing the case and, subject to court approval, an additional \$8,000.00 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. *Id.* The motion indicates that Applicant was paid \$1,987.00 plus the \$313.00 filing fee, which is reflected in the *Amended Disclosure of Compensation of Attorney for Debtor(s)* Form 2030. Docs. #14; #25. In sum, Debtor paid \$2,300.00 to Applicant in pre-petition payments.

This is Applicant's first and final fee application. The source of funds for payment will be from the \$2,300.00 retainer with the remaining \$7,838.56 paid by the chapter 13 trustee in accordance with the confirmed chapter 13 plan.

Applicant's firm provided 42.30 billable hours of legal services at the following rates, totaling \$9,819.00 in fees. After application of \$1,987.00 from the retainer, Applicant here requests **\$7,519.00**:

Professional	Rate	Hours	Amount
Gabriel J. Waddell (no charge)	\$0	0.4	\$0.00
Gabriel J. Waddell (2021)	\$330	12.70	\$4,191.00
Gabriel J. Waddell (2022)	\$345	10.00	\$3,450.00
Katie Waddell (2020)	\$245	0.50	\$122.50
Kayla Schlaak (no charge)	\$0	0.70	\$0.00
Kayla Schlaak (2021)	\$110	12.80	\$1,408.00
Kayla Schlaak (2022)	\$125	5.10	\$637.50
Laurel Guenther (2022)	\$100	0.10	\$10.00
Total Hours & Fees		42.30	\$9,819.00
Pre-petition payment (excluding filing fee)			- \$1,987.00
Requested this Application			= \$7,519.00

Doc. #27, Exs. B, C. Applicant also incurred **\$319.56** in expenses:

Photocopying	\$2.10
Postage	+ \$4.46
Filing fees	+ \$313.00
Total Costs	= \$319.56
Pre-petition payment	- \$313.00
Remaining Expenses	= \$ 6.56

Id., Ex. B. These combined fees and expenses total **\$10,138.56**. After application of the full \$2,300 prep-petition payment, **\$7,838.56** remain to be paid through the plan.

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).

Applicants services included, without limitation: (1) consulting with Debtor pre-petition regarding the bankruptcy, preparing a legal services agreement, and communicating re: issues in this case; (2) preparing petition, the plan, and schedules; (3) independently verifying facts necessary to prepare the bankruptcy; (4) preparing and filing an amended attorney compensation statement; (5) communicating with Debtor regarding the § 341 meeting of creditors and appearing with Debtor at the meeting; (6) analyzing creditor correspondence and notices filed by the trustee and communicating with the trustee regarding the order confirming plan; (7) corresponding with Debtor regarding a *Notice of Default*, analyzing current income and expenses to calculate plan modification options, and preparing and filing *Amended Schedules I and J* to reflect Debtor's new employment at a higher income sufficient to cure the *Notice of Default*; (8) preparing and filing this fee application (FW-1). Doc. #27, Ex. A. The court finds the services and expenses actual, reasonable, and necessary. No party in interest filed opposition and Debtor consents to payment of the proposed fees. *Id.*, Ex. E.

Accordingly, this motion will be GRANTED. Applicant shall be awarded \$9,819.00 in fees and \$319.56 in reimbursement of expenses on an interim basis, subject to final review under § 330. After application of Debtor's \$2,300 pre-petition payment (including the \$313.00 filing fee), the chapter 13 trustee will be authorized, in his discretion, to pay Applicant **\$7,838.56** as reasonable compensation for services rendered and reimbursement of actual, necessary expenses from May 6, 2021 through June 22, 2022.

4. [21-10822](#)-B-13 **IN RE: LETICIA PENA**
[MHM-2](#)

MOTION TO DISMISS CASE
7-12-2022 [\[52\]](#)

MICHAEL MEYER/MV
BENNY BARCO/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 under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 1307(a)(6) for failure to make all payments due under the confirmed plan. Doc #52. Debtor 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 debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor has failed to make all payments due under the plan as required by 11 U.S.C. § 1307(c)(6). Doc #54.

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)(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 \$1,961.63 after trustee compensation if the case were converted to chapter 7. Doc. #54. This amount is comprised of the value of debtor's tax refunds. *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, and the case dismissed.

5. [19-14427](#)-B-13 **IN RE: ISIDRO AREVALO AND CARMEN GUZMAN**
[MHM-4](#)

MOTION TO DISMISS CASE
7-1-2022 [[66](#)]

MICHAEL MEYER/MV
MARK HANNON/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 under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtors that is prejudicial to creditors and 11 U.S.C. § 1307(a)(6) for material default with respect to a confirmed plan. Doc #66. 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 materially defaulted under the terms of their plan. The trustee indicates that the debtors failed to provide claim information against Mercury Insurance for a car accident claim (11 U.S.C. § 1307(c)(6)). Doc. #68.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for "cause". "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(6) for materially defaulting under the terms of the plan.

In addition, the trustee has reviewed the schedules and determined that the debtors' assets are over encumbered and are of no benefit to the estate. Docs. #66; #68.

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

6. [18-13447](#)-B-13 **IN RE: WILEY GARDNER**
[FW-3](#)

CONTINUED MOTION TO AVOID LIEN OF CITIBANK SOUTH DAKOTA,
N.A. , AND MOTION/APPLICATION TO AVOID LIEN OF CITIBANK
SOUTH DAKOTA, N.A.
6-21-2022 [[90](#)]

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

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

DISPOSITION: Granted; taken off calendar.

NO ORDER REQUIRED.

This motion was originally heard on July 27, 2022 and continued for tracking purposes while the parties conferred on mutually agreeable language for the order. Docs. #100; #102. On August 1, 2022, the court entered the *Order Granting Motion to Avoid Judicial Liens of Noble Credit Union and CitiBank South Dakota, N.A.*, which was approved as to form by counsel for Noble Credit Union. Doc. #104. Accordingly, this

matter will be dropped and taken off calendar because an order granting the motion has already been entered.

7. [19-10752](#)-B-13 **IN RE: STEVEN CHAVEZ**
[MHM-3](#)

MOTION TO DISMISS CASE
7-12-2022 [[158](#)]

MICHAEL MEYER/MV
SHARLENE ROBERTS-CAUDLE/ATTY. FOR DBT.

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to September 21, 2022 at 9:30 a.m.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and 11 U.S.C. § 1307(a)(6) for failure to make all payments due under the confirmed plan. Doc #158.

Steven Chavez ("Debtor") did not oppose. However, on August 9, 2022, Debtor filed the *Fourth Modified Chapter 13 Plan* dated August 9, 2022 and set it for a confirmation hearing for September 21, 2022. #159; #165. Accordingly, Trustee's motion will be CONTINUED to September 21, 2022 at 9:30 a.m. to be heard in connection with the motion to modify plan.

8. [21-12559](#)-B-13 **IN RE: JOANNA CAVAZOS**
[TCS-1](#)

MOTION TO MODIFY PLAN
6-23-2022 [\[22\]](#)

JOANNA CAVAZOS/MV
TIMOTHY SPRINGER/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.

Joanna Lynn Cavazos ("Debtor") seeks an order confirming the *First Modified Chapter 13 Plan* dated June 23, 2022. Doc. #22. The plan provides that Debtor will make an aggregate payment of \$6,593.00 through months 1-6, and \$1,000.00 per month from month 7 to 60 with a 17% dividend to allowed, non-priority unsecured claims. Doc. #24.

In contrast to the operative *Chapter 13 Plan* dated November 2, 2021, confirmed December 28, 2021, Debtor's monthly payment is decreasing from \$1,731.00 for 60 months with an 83% dividend to unsecured claims. Docs. #3; #15.

Since confirmation of the previous plan, Debtor's expenses have significantly increased for rent and childcare. Doc. #26. Debtor's *Amended Schedules I and J* indicate \$1,000.00 in monthly net income, which is sufficient to fund the proposed plan. 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.

9. [19-10873](#)-B-13 **IN RE: IVAN/RODELIA VILLA**
[MHM-2](#)

MOTION TO DISMISS CASE
7-13-2022 [[86](#)]

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

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED

The chapter 13 trustee withdrew this motion on August 5, 2022.
Doc. #93. Accordingly, this matter will be taken off calendar pursuant to the trustee's withdrawal.

10. [22-10974](#)-B-13 **IN RE: FRANCISCO SAMANIEGO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-15-2022 [[21](#)]

T. O'TOOLE/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: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the chapter 13 filing fee in the amount of \$313.00 was paid on August 4, 2022. Therefore, the *Order to Show Cause* will be vacated.

11. [19-14186](#)-B-13 **IN RE: HUMBERTO/NANCY VIDALES**
[JCW-2](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
6-30-2022 [\[129\]](#)

WELLS FARGO BANK, N.A./MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Wells Fargo Bank, N.A. ("Movant") moves for an order stating that there is no automatic stay in effect with respect to it or its trustee under the deed of trust securing its claim, so that Movant and its trustee may commence and continue all acts necessary to foreclose on Debtor's property located at 15821 W. B St., Kerman, CA 93630 ("Property"). Doc. #129. Movant is listed in Class 4 of the chapter 13 plan, which states, "upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." Doc. #107.

This motion will be DENIED. Movant cites no authority for such an order in this circumstance. This is not a motion under 11 U.S.C. § 362(c) or (j).

12. [21-12591](#)-B-13 **IN RE: MICHELLE FRANCO**
[PLG-4](#)

MOTION TO MODIFY PLAN
7-6-2022 [\[44\]](#)

MICHELLE FRANCO/MV
RABIN POURNAZARIAN/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.

Michelle Lynne Franco ("Debtor") moves for an order confirming the *First Modified Chapter 13 Plan* dated July 6, 2022. Doc. #44. The plan proposes that plan payments will be as received through June 2022 (month 7), \$0.00/month from July 2022 to November 2022, and then

\$539.00/month starting December 2022 (month 13) through the end of the plan (month 56).

In contrast to the operative *First Amended Chapter 13 Plan* dated January 27, 2022, confirmed plan payments are modified from \$503/month for 9 months and \$726/month for 47 months. Docs. #20; #29. Both plans have a 100% dividend to allowed, non-priority unsecured claims.

Debtor wishes to suspend 5 plan payments after being placed on temporary total disability. Doc. #48. Debtor's income has decreased, and Debtor has had to cover insurance payments. *Id.*; Doc. #47, *Ex. 2*. Debtor's original *Schedules I* and *J* dated November 8, 2021 indicated that Debtor received \$509.74 in monthly net income, which should be similar upon returning to work. Doc. #1. 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. Upon returning to work, Debtor shall promptly update schedules on the trustee's request.

13. [20-10494](#)-B-13 **IN RE: SABRINA RODRIGUEZ**
[MHM-3](#)

MOTION TO DISMISS CASE
7-12-2022 [\[37\]](#)

MICHAEL MEYER/MV
JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Granted as modified and converted.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and 11 U.S.C. § 1307(a)(6) for failure to make all payments due under the confirmed plan. Doc #37. Sabrina Rose Ann Rodriguez ("Debtor") did not oppose.

Unless Trustee's motion is withdrawn before the hearing, the motion will be GRANTED AS MODIFIED and the case CONVERTED TO CHAPTER 7 without oral argument for cause shown.

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

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The Debtor has failed to make all payments due under the plan as required by 11 U.S.C. § 1307(c)(6). Doc #39.

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)(6) for failure to complete the terms of the confirmed plan.

In addition, Trustee has reviewed the schedules and determined that this case has a liquidation value of \$17,250.00 after trustee compensation. Doc. #39. This amount is comprised of the value of debtor’s 2019 Honda Civic. *Id.* If Debtor were to amend the exemptions, there would remain non-exempt equity that could be realized for the benefit of unsecured creditors should the case be converted to chapter 7. *Id.* Therefore, conversion, rather than dismissal, serves the interests of creditors and the estate.

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

14. [21-10895](#)-B-13 **IN RE: JASON/ASHLEY WILLIAMS**
[MHM-1](#)

MOTION TO DISMISS CASE
7-12-2022 [\[51\]](#)

MICHAEL MEYER/MV
PETER BUNTING/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: Denied as moot.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer (“Trustee”) asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors and 11 U.S.C. § 1307(a)(6) for failure to make all payments due under the confirmed plan. Doc. #51.

Jason Russell Williams and Ashley Jane Williams (collectively “Debtors”) did not oppose. However, on August 9, 2022, Debtors filed an *ex parte* motion to dismiss under 11 U.S.C. § 1307(b). Doc. #55. That same day, the court granted the motion and dismissed the case. Doc. #58.

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

15. [20-10915](#)-B-13 **IN RE: ELOY/DELLA RUIZ**
[RSW-3](#)

CONTINUED MOTION TO MODIFY PLAN
6-13-2022 [\[46\]](#)

DELLA RUIZ/MV
ROBERT WILLIAMS/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.

This motion was previously continued from August 3, 2022 so that the debtors could file amended schedules. Docs. #58; #59.

Eloy Martinez Ruiz and Della Marie Ruiz (collectively "Debtors") moved for an order approving the *Second Modified Chapter 13 Plan* dated June 13, 2022. Doc. #46. The proposed plan provides for 60 months of payments in which Debtors shall pay a total of \$63,942.00 through May 2022, and beginning June 2022 (month 32), the monthly payment will be \$3,306.00 through the end of the plan. Doc. #50. Per Debtors' *Amended Schedules I and J* dated June 16, 2022, Debtors had \$3,305.37 in monthly net income. Doc. #52.

In contrast to the operative *First Modified Plan* dated June 11, 2021, the proposed plan reduces the term from 84 months to 60 months and increases the monthly payment from \$2,800.00/month to \$3,306.00/month. *Id.*; cf. Docs. #33; #41. Both plans provide for a 0% dividend to allowed, non-priority unsecured claims.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because the Debtors will not be able to make all payments under the plan and comply with the plan. Doc. #54. Trustee said that if the plan is approved, there would remain a total of 33 months including July 2022. However, the plan as proposed would take 35.11 months to fund because Additional Provision 7.03 accounts for post-petition mortgage delinquencies, but there was a previous post-petition mortgage delinquency that had not been satisfied at the time of modification. *Id.* As a result, Debtors now owe a total post-petition delinquency, including late fees, of \$7,619.44. Additionally, the plan fails to account for priority claims totaling \$1,342.49, and interest in the amount of \$453.48 due to Class 2 creditors. *Id.* To fund the plan in 33 months, Debtors would need to increase the plan payment to at least \$3,386.00. *Id.*

Debtors replied, agreeing to increase the plan payment to \$3,386.00 in accordance with Trustee's calculations. Doc. #56.

The court noted that Debtors' monthly net income appears to be \$80.63 short of Trustee's proposed increased plan payment. At the August 3, 2022 hearing, the court inquired whether the plan is feasible. The motion was continued, and Debtors were directed to file *Amended Schedules I and J* to prove feasibility. Docs. #58; #59.

Debtors filed new *Amended Schedules I and J* on August 5, 2022, which indicate that Debtors have \$3,385.37 in monthly net income. Doc. #62. This is \$0.63 short of Trustee's proposed \$3,386.00, but this deficit is *de minimis*. The plan appears to be feasible.

This matter will be called as scheduled because Trustee's objection can be resolved in the order confirming plan. 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.

16. [18-14143](#)-B-13 **IN RE: DAVID/CARLA LOWERY**
[MHM-3](#)

MOTION TO VACATE DISMISSAL OF CASE
8-3-2022 [[56](#)]

MICHAEL MEYER/MV
CHRISTOPHER FISHER/ATTY. FOR DBT.
OST 8/3/22

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 at hearing.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves for an order vacating the dismissal of this case pursuant to Federal Rules of Civil Procedure ("Civ. Rule") 59 and 60, as incorporated by Federal Rules of Bankruptcy Procedure ("Rule") 9023 and 9024, respectively. Doc. #56.

This motion was set for hearing on 7 days' notice under the procedure specified in Local Rule of Practice ("LBR") 9014-1(f)(3) with an *Order Shortening Time*. Docs. #56; #60. Consequently, no party in interest was required to file a written response or opposition to the motion. If any party appears at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no

opposition is offered at the hearing, the court will take up the merits of the motion.

David T. Lowery and Carla J. Lowery ("Debtors") filed chapter 13 bankruptcy on October 11, 2018. Doc. #1. Their *First Amended Chapter 13 Plan* dated November 24, 2018 was confirmed on January 22, 2019. Docs. #25; #40.

On June 27, 2022, Trustee filed a *Motion to Dismiss* because Debtors were delinquent \$1,982.79 as of June 27, 2022. MHM-3. However, Trustee says that its records indicated that Debtors were delinquent \$2,483.58. Debtors did not respond. On July 27, 2022, the motion was granted without oral argument and the case was dismissed. Doc. #60.

Based on Trustee's review, Debtors complied with the motion. Debtors made two payments prior to the hearing totaling \$2,977.58, which represented the \$1,982.79 delinquency and the July 2022 plan payment. Doc. #59. Since Trustee's system still showed a delinquency of \$500.79 through July 2022, the motion was not withdrawn. But since Debtors complied with the terms for withdrawal stated in the motion, Trustee moves to vacate the dismissal under Civ. Rules 59 and 60. Doc. #56.

Rule 9023 and Civ. Rule 59(e) allows a party to file a motion to alter or amend a judgment within 14 or 28 days, respectively, after entry of the judgment. The case was dismissed on July 27, 2022, which is 7 days before Trustee filed this motion. Docs. #53; #56. This motion is therefore timely under both Rule 9023 and Civ. Rule 59(b).

Under Civ. Rule 59(e), motions "may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Marlyn Nutraceuticals, Inc. v. Mucos Pharms GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). The rule "does not provide a vehicle for a party to undo its own procedural failures [or] allow a party to introduce new evidence or advance new arguments that could and should have been presented at the [bankruptcy] court prior to the judgment." *DiMarco-Zappa v. Cabanillas*, 238 F.3d 25, 34 (1st Cir. 2001). The rule authorizes reconsideration or amendment of a previous order, but it is "an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). "Indeed, a motion for reconsideration should not be granted absent highly unusual circumstances, unless the [bankruptcy] court is presented with newly discovered evidence, committed clear error, or if there is an intervening change of controlling law." *Id.*

Here, no clear error or intervening change of controlling law is presented. However, Trustee has arguably presented newly discovered evidence. Trustee declares that after reviewing the motion to dismiss, Debtors did in fact comply with the motion by paying the \$1,982.79 delinquency listed and the July 2022 plan payment. Doc. #59. The motion was not withdrawn because the Trustee's system still showed a

\$500.79 delinquency through July 2022, but that additional delinquency was not listed in the motion as needing to be cured before the hearing. *Id.* Had Trustee discovered the clerical error in the motion to dismiss prior to the hearing, the motion likely would have been withdrawn. However, that evidence did exist prior to the hearing and could have been discovered earlier.

Rule 9024 incorporates Civ. Rule 60(b) and permits the court to grant relief from a final judgment, order, or proceeding based on: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that could not have been discovered in time to move for a new trial under Civ. Rule 59(b); (3) fraud, misrepresentation, or misconduct; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or (6) any other reason that justifies relief. Civ. Rule 60(b). Such request must be made "within a reasonable time" generally, and within one year when requested under Civ. Rule 60(b)(1), (2), or (3). Civ. Rule 60(c). The court construes Movant's request as one under Civ. Rule 60(b)(1).

Courts are permitted, where appropriate, to relieve a party or its legal representative from a judgment, order, or proceeding due to a party's "inadvertence, mistake, or carelessness, as well as intervening circumstances beyond the party's control." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 388 (1993). This determination is "an equitable one taking account of all relevant circumstances surrounding the party's omission." *Id.*, at 395. The factors to consider include:

1. Danger of prejudice to the debtor;
2. Length of delay and potential impact on judicial proceedings;
3. Reason for the delay, including whether it was in the movant's control; and
4. Whether the party acted in good faith.

1. Danger of prejudice to the debtor: Here, Debtors were in bankruptcy for 3 years, 9 months, and 16 days prior to dismissal. They were 45 months into their 60-month chapter 13 plan. If the order dismissing their case is not vacated, they will be forced to start over. Since Debtors will be prejudiced if this order is not vacated, this factor weighs towards granting the motion and vacating the dismissal.

2. Length of delay and potential impact on judicial proceedings: Trustee filed this motion 7 days after the case was dismissed, so any delay here is minimal. Though there will be a slight impact on judicial proceedings, this factor favors granting the motion and vacating the dismissal order.

3. Reason for the delay, including whether it was in the movant's control: The reason for the delay was a clerical error in Trustee's motion to dismiss informing Debtors that they had to cure a \$1,982.79 delinquency plus each and every payment that comes due before the hearing (the July 2022 plan payment). Debtors complied with these

terms. However, they were actually delinquent \$2,483.58, so upon curing the amounts stated in the motion, Trustee's office continued to see a \$500.79 delinquency. Based on this assessment, Trustee's office did not withdraw the motion to dismiss as promised in the motion. Based on the prompt filing of this motion, this factor slightly favors granting the motion.

4. Whether the party acted in good faith: Nothing in the record indicates that either party has acted in bad faith. This factor favors granting the motion.

This matter will be called and proceed as scheduled to inquire whether any parties in interest oppose vacatur. Any order issued by the court will be without prejudice to those parties in interest who acted in good faith relying on the dismissal.

11:00 AM

1. [19-15103](#)-B-7 **IN RE: NATHAN/AMY PERRY**
[20-1017](#) [CAE-1](#)

CONTINUED FURTHER STATUS CONFERENCE RE: COMPLAINT
3-15-2020 [\[1\]](#)

RICHNER ET AL V. PERRY
RICHARD FREEMAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

This status conference was continued from May 25, 2022 to August 10, 2022. Docs. #61; #63. The court ordered the plaintiffs to file and serve a status report not later than August 3, 2022. *Id.* No such status report has been filed. This matter will be called as scheduled to inquire why a status report was not filed. If plaintiffs do not appear at the hearing, the court may issue an *Order to Show Cause* why the case should not be dismissed for failure to prosecute.

2. [21-10753](#)-B-7 **IN RE: GUSTAVO DEL TORO**
[21-1027](#)

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

PRODUCERS LIVESTOCK MARKETING
ASSOCIATION V. DEL TORO
MICHAEL GOMEZ/ATTY. FOR PL.

NO RULING.

The court is in receipt of *Plaintiff's Pre-Trial Statement*, *Defendant's Pre-Trial Statement*, the *Supplement to Plaintiff's Pre-Trial Statement*, and the *Declaration of Michael J. Gomez Regarding Plaintiff Producers Livestock Marketing Association's Compliance with Scheduling Order*. Docs. #31; #33; #35; #37. This pre-trial conference will be called and proceed as scheduled.

3. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1123](#)

HEARING ON OBJECTIONS TO THE EXHIBITS RE: JOINT PRETRIAL
ORDER RE: AMENDED COMPLAINT
4-26-2022 [[182](#)]

TULARE LOCAL HEALTHCARE
DISTRICT V. MEDLINE

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

DISPOSITION: Resolved by stipulation.

ORDER: The court will issue an order.

The parties indicate a tentative settlement of this matter, which was approved by the plaintiff's Board of Directors on August 3, 2022. Doc. #202. Though the terms have been reached and approved, the parties require additional time to draft a formal settlement agreement and obtain signatures from the parties. Accordingly, the parties agreed to vacate the trial currently set for August 17-19, 2022 and set a further status conference on October 26, 2022 at 11:00 a.m. *Id.*

Since the parties agreed to vacate the trial by stipulation, this hearing on objections to the exhibits is no longer necessary. Accordingly, this hearing will be removed from calendar pursuant to the parties' stipulation vacating the trial.