



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, August 17, 2023  
Department A – Courtroom #11  
Fresno, California**

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) **IN PERSON** in Courtroom #11 (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.

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

1. [22-10909](#)-A-13     **IN RE: JASON ATHERTON AND GENZZIA DOVIGI-ATHERTON**  
[TCS-5](#)

MOTION TO MODIFY PLAN  
7-1-2023    [\[85\]](#)

GENZZIA DOVIGI-ATHERTON/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.

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

This motion is 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.

2. [23-10010](#)-A-13     **IN RE: PARMINDER SINGH AND RANJIT KAUR**  
[MHM-2](#)

MOTION TO DISMISS CASE  
7-11-2023    [\[61\]](#)

JERRY LOWE/ATTY. FOR DBT.

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:     Granted in part; the case will be converted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, 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. Because the court intends to convert this case instead of dismissing it, this matter will proceed as scheduled.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because the debtors have failed to make all payments due under the plan (11 U.S.C. § 1307(c)(4)). The debtors are delinquent in the amount of \$742.04. Doc. #61. Before this hearing, another payment in the amount of \$1,000.00 will also come due. Id. The debtors did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to timely make payments due under the plan.

A review of the debtors' Schedules A/B and D shows that there is a liquidation amount of \$41,164.80 after trustee compensation. Decl. of Lillian G. Tsang, Doc. #62. This liquidation amount is comprised of the value of the debtors' 2004 Buick Rainer, 2016 GMC Terrain, cash on hand, Citibank bank accounts, and inventory. Id. Because there appears to be sufficient non-exempt equity in the debtors' assets to be realized for the benefit of the estate, conversion, rather than dismissal, is in the best interests of creditors and the estate.

Accordingly, the motion will be GRANTED IN PART, and the case will be converted.

3. 23-11013-A-13      **IN RE: JOASH KEMEI**  
PLG-1

MOTION TO CONFIRM PLAN  
6-16-2023    [15]

JOASH KEMEI/MV  
RABIN POURNAZARIAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:      Continued to September 28, 2023 at 9:30 a.m.

ORDER:              The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #25. Unless this case is voluntarily converted to Chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than 2 weeks from date of original hearing. The response shall specifically address each issue raised in

the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by 3 weeks from date of original hearing.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than 3 weeks from date of original hearing. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

4. [22-11124](#)-A-13      **IN RE: ROBERT ZAMORA AND NICOLE SELLERS**  
[MHM-2](#)

MOTION TO DISMISS CASE  
7-7-2023    [\[80\]](#)

SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted in part; the case will be converted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, 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. Because the court intends to convert this case instead of dismissing it, this matter will proceed as scheduled.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because the debtors have failed to make all payments due under the plan (11 U.S.C. § 1307(c)(6)). The debtors are delinquent in the amount of \$4,275.00. Doc. #80. Before this hearing, another payment in that same amount will also come due. Id. The debtors did not oppose.

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

A review of the debtors' Schedules A/B and D shows that there is a liquidation amount of \$97,982.82 after trustee compensation. Decl. of Lillian G. Tsang, Doc. #82. This liquidation amount is comprised of the value of the debtors'

2009 Honda Accord, funds in bank account at the time of filing, 2020 federal tax refund, and 2021 federal and state tax refund. Id. Because there appears to be sufficient non-exempt equity in the debtors' assets to be realized for the benefit of the estate, conversion, rather than dismissal, is in the best interests of creditors and the estate.

Accordingly, the motion will be GRANTED IN PART, and the case will be converted.

5. [23-10232](#)-A-13      **IN RE: SHAUN SESTINI**  
[DK-4](#)

MOTION TO CONFIRM PLAN  
6-29-2023    [\[46\]](#)

SHAUN SESTINI/MV  
DANIEL KING/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Denied.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). On July 31, 2023, the chapter 13 trustee filed an objection to the debtor's motion to confirm the chapter 13 plan. Doc. #62. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. This matter will proceed as scheduled.

Shaun Sestini ("Debtor") filed a voluntary petition under chapter 13 on February 8, 2023 and filed an amended chapter 13 plan ("Plan") on April 18, 2023. Doc. #1, 30. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because Debtor will not be able to make all payments under the plan and comply with the plan as required by 11 U.S.C. § 1325(a)(6). Doc. #62.

Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6).

The Plan calls for monthly payments of \$430.00 for 60 months with no nonstandard provisions. Plan, Doc. #30. Here, Plan payments are delinquent in the amount of \$447.00 through July 2023. Doc. #62. Because Debtor is behind in his plan payments, the court finds that Debtor will not be able to make all payments under the plan and comply with the plan.

Accordingly, the court is inclined to DENY confirmation of the Plan.

6. [23-10232](#)-A-13     **IN RE: SHAUN SESTINI**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
6-23-2023    [\[42\]](#)

MICHAEL MEYER/MV  
DANIEL KING/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

7. [23-10732](#)-A-13     **IN RE: JUAN SANDOVAL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-20-2023    [\[56\]](#)

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

The court is granting the trustee's Motion to Dismiss [MHM-1] below, therefore this order to show cause will be DROPPED AS MOOT.

8. [23-10732](#)-A-13     **IN RE: JUAN SANDOVAL**  
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE  
5-12-2023    [\[21\]](#)

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

DISPOSITION:     Granted.

ORDER:             The court will issue the order.

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

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

Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because the debtor has failed to complete a Credit Counseling Certificate timely (11 U.S.C. § 109(h)). Doc. #21. The debtor did not file written opposition.

Under 11 U.S.C. § 109(h), an individual may not be a debtor unless the debtor received credit counseling within the 180-day period ending on the petition date. 11 U.S.C. § 109(h)(1). Juan Reynoso Sandoval ("Debtor") filed for relief under chapter 13 of the Bankruptcy Code on April 12, 2023. Doc. #1. Debtor has not filed a certificate of pre-petition credit counseling.

The Bankruptcy Code allows the debtor to request a waiver of the § 109(h)(1) requirement to receive credit counseling pre-petition based on exigent circumstances. 11 U.S.C. § 109(h)(3)(A). However, Debtor has not requested a waiver of the § 109(h)(1) requirements post-petition within the time limits provided by 11 U.S.C. § 109(h)(3)(B). Because Debtor did not receive credit counseling within the 180-days prior to filing the bankruptcy petition and has not received a waiver of that requirement, Debtor may not be a debtor pursuant to § 109(h).

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) because Debtor did not obtain pre-petition credit counseling as required by § 109(h)(1) and did not request a waiver of the § 109(h)(1) requirement post-petition within the time period provided by 11 U.S.C. § 109(h)(3)(B).

Because Debtor is not eligible to be a debtor, dismissal rather than conversion is appropriate.

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

9. [23-10732](#)-A-13 **IN RE: JUAN SANDOVAL**  
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE  
6-21-2023 [[48](#)]

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court is granting the trustee's Motion to Dismiss [MHM-1] above, therefore this Motion to Dismiss [MHM-3] will be DENIED AS MOOT.



10. [23-10755](#)-A-13     **IN RE: MICHAEL/CYNTHIA LOMONACO**  
[PBB-2](#)

MOTION TO CONFIRM PLAN  
7-7-2023    [\[45\]](#)

CYNTHIA LOMONACO/MV  
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

This motion is 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. [22-12163](#)-A-13     **IN RE: TINA GARCIA**  
[SL-1](#)

CONTINUED OBJECTION TO CLAIM OF CHICAGO TITLE INSURANCE COMPANY,  
CLAIM NUMBER 6  
4-11-2023    [\[44\]](#)

TINA GARCIA/MV  
SCOTT LYONS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:     Set for evidentiary hearing.

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

This objection was set for hearing on 44 days' notice pursuant to Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of 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 3007-1(b)(1)(A) may be deemed a waiver of any opposition to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

As a procedural matter, the opposition filed by Chicago Title Insurance Company ("Chicago Title") does not comply with LBR 9014-1(f)(1)(B) because the opposition to the objection to claim was not served and filed with the court by the claimant at least fourteen (14) days preceding the date of the hearing. The opposition was filed on May 12, 2023, which was thirteen (13) days before hearing and is untimely. Doc. #58.

LBR 9014-1(f)(1)(B) requires a party to show good cause before the court will consider an untimely filing and improperly served opposition. On May 22, 2023, counsel for Chicago Title filed a declaration addressing why Chicago Title's response was not filed timely. Decl. of Christopher R. Thomas, Doc. #67. In the declaration, Mr. Thomas explains that the deadline to file a response to the objection to Chicago Title's claim was not calendared, and Mr. Thomas first learned about the deadline to respond to the objection to claim on May 11, 2023, which was the same day as the response was due. Thomas Decl., Doc. #67. On that day, Mr. Thomas also learned he was not registered to file pleadings in the Eastern District of California Bankruptcy Court and worked with this court's help desk to obtain a username and password to file pleadings. Id. However, the help desk had closed by the time Mr. Thomas tried to upload the response through ECF and was unable to file the response and related pleadings until Friday, May 12, 2023. Id. Based on the explanation provided by counsel for Chicago Title, the court finds that good cause exists to permit this court to consider Chicago Title's late-filed response.

As a further procedural matter, the opposition filed by Chicago Title was not served by mail on the parties listed in Notice of Hearing. Doc. #45. Rather, the opposition was served by email on counsel for the debtor, the chapter 13 trustee, and the United States Trustee, but not served on the debtor in violation of LBR 3007-1(b)(1)(A). Doc. #61.

Debtor Tina Louise Garcia ("Debtor"), the debtor in this Chapter 13 bankruptcy case, objects to claim no. 6 ("Claim") filed by Chicago Title. Doc. #44. The Claim asserts there is an unsecured claim of \$149,561.08 stemming from a Second Deed of Trust originally owned by Brooks America Mortgage Corporation and transferred to Nationstar Mortgage ("Nationstar") that Chicago Title paid to Nationstar. Claim 6-2.

Debtor objects to the Claim on two grounds:

- (1) The Claim is unenforceable under California state law and should be entirely disallowed pursuant to 11 U.S.C. § 502(b)(1) because the Claim is barred by the statute of limitations; and
- (2) The underlying debt secured by the Second Deed of Trust was forgiven and cancelled by Nationstar as evidenced by the issuance of a Form 1099-C by Nationstar to Debtor in the amount of \$88,459.62.

At the initial hearing held on May 25, 2023, the court permitted Debtor to respond to Chicago Title's assertion that the applicable statute of limitations is under California Civil Code § 1113 or California Code of Civil Procedure § 337, and not California Code of Civil Procedure § 339, as asserted by Debtor. On July 27, 2023, Debtor filed a supplemental brief stating that the statute of limitations issue requires a trial. Doc. #85.

Accordingly, it appears that an evidentiary hearing is needed to resolve this objection to the Claim. The parties should come to the hearing with proposed deadlines for Federal Rule of Civil Procedure 26(a)(1)(A) initial disclosures and close of fact discovery, a recommendation as to whether experts are needed and, if so, deadlines for designation of experts and rebuttal experts as well as submission of expert and rebuttal expert reports, and a deadline for the close of expert discovery.

12. [23-11263](#)-A-13     **IN RE: ROBERT/ANNA MCKINNEY**  
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE LLC  
7-25-2023    [\[23\]](#)

NATIONSTAR MORTGAGE LLC/MV  
PETER BUNTING/ATTY. FOR DBT.  
CASSANDRA RICHEY/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

13. [23-11263](#)-A-13     **IN RE: ROBERT/ANNA MCKINNEY**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
6-30-2023    [\[13\]](#)

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

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

DISPOSITION:        Overruled as moot.

ORDER:                The court will issue an order.

This objection is OVERRULED AS MOOT. The debtors filed an amended Schedule C on August 4, 2023, omitting the claimed exemption in the personal injury slip and fall claim.

14. [23-11183](#)-A-13     **IN RE: TOMMY FIELDS**  
[ALG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-10-2023    [\[34\]](#)

ROGER ANDERSON/MV  
ARNOLD GRAFF/ATTY. FOR MV.  
DISMISSED 7/14/23

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

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

An order dismissing the bankruptcy case was entered on July 14, 2023. Doc. #50. Therefore, the motion for relief from the automatic stay will be DENIED AS MOOT.

15. [23-11094](#)-A-13     **IN RE: RICHARD GOMEZ**  
[MHM-4](#)

MOTION TO DISMISS CASE  
7-19-2023    [\[36\]](#)

SUSAN SILVEIRA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

As a procedural matter, the opposition filed by the debtor does not comply with Local Rule of Practice ("LBR") 9014-1(f)(1)(B) because the opposition to the motion to dismiss was not served and filed with the court by the claimant at least fourteen (14) days preceding the date of the hearing. The opposition was filed and served on August 13, 2023, which was four (4) days before hearing and is untimely.

LBR 9014-1(f)(1)(B) requires a party to show good cause before the court will consider an untimely filing and improperly served opposition. Because the debtor's opposition did not address whether good cause exists to permit this court to consider his late-filed and improperly served response, the court will give the debtor the opportunity to address this issue at the hearing prior to determining whether to consider the debtor's opposition.

11:00 AM

1. [23-10704](#)-A-7     **IN RE: ROSLYN THOMAS**  
[23-1023](#)     [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT STATUS CONFERENCE  
5-16-2023     [7]

THOMAS V. UNITED STATES DEPARTMENT OF EDUCATION  
SUSAN HEMB/ATTY. FOR PL.

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

DISPOSITION:     Continued to October 19, 2023 at 11:00 a.m.

ORDER:     The court will issue an order.

Based on the stipulation filed on August 1, 2023 (Doc. #16) extending the deadline for the defendant to respond to the complaint, the status conference will be continued to October 19, 2023 at 11:00 a.m.

If the defendant answers the complaint prior to September 28, 2023, the parties shall comply with the various requirements set forth in the Order to Confer on Initial Disclosures and Setting Deadlines (Doc. #5) using the October 19, 2023 status conference date.

2. [23-10414](#)-A-7     **IN RE: BRENDA GALAN**  
[23-1027](#)     [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
6-9-2023     [1]

GALAN V. UNITED STATES DEPARTMENT OF EDUCATION ET AL  
PETER BUNTING/ATTY. FOR PL.

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

DISPOSITION:     Continued to October 19, 2023 at 11:00 a.m.

ORDER:     The court will issue an order.

Based on the stipulation filed on August 10, 2023 (Doc. #7) extending the deadline for the defendant to respond to the complaint, the status conference will be continued to October 19, 2023 at 11:00 a.m.

If the defendant answers the complaint prior to September 28, 2023, the parties shall comply with the various requirements set forth in the Order to Confer on Initial Disclosures and Setting Deadlines (Doc. #5) using the October 19, 2023 status conference date.

3. [22-11042](#)-A-7     **IN RE: TIFFINI HUGHES**  
[22-1019](#)     [DMG-4](#)

MOTION BY D. MAX GARDNER TO WITHDRAW AS ATTORNEY  
7-17-2023     [\[57\]](#)

LABOR COMMISSIONER OF THE STATE OF CALIFORNIA V. HUGHES

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On July 31, 2023, the defendant filed her consent to the motion to withdraw. Doc. #66. The failure of the U.S. Trustee or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

D. Max Gardner ("Movant"), counsel for Tiffini R. Hughes ("Defendant"), the defendant in this adversary proceeding, moves to withdraw as Defendant's attorney of record. Doc. #57. Movant's withdrawal will leave Defendant unrepresented by counsel.

LBR 2017-1(e) states that "an attorney who has appeared may not withdraw leaving the client *in propria persona* without leave of court upon noticed motion and notice to the client and all other parties who have appeared." The local rule goes on to require the attorney seeking withdrawal to "provide an affidavit stating the current or last known address" of the client and "the efforts made to notify the client of the motion to withdraw." LBR 2017-1(e). Withdrawal is governed by the California Rules of Professional Conduct. Id.

Movant has conformed with the Local Rules. Movant testifies as to Defendant's current or last known address. Movant does not explain the efforts made to notify Defendant of the motion to withdraw. Nevertheless, Defendant consents to Movant's withdrawal as her attorney. Decl. of D. Max Gardner, Doc. #59; Consent, Doc. #66. The certificate of service filed with this motion shows that Defendant received notice via U.S. mail. Doc. #60. Service was also made upon the plaintiff and the United States Trustee. Doc. #60.

Pursuant to California Rule of Professional Conduct 1.16, formerly California Rule of Professional Conduct 3-700, a lawyer may withdraw from representing a client if the client breaches a material term of an agreement with the lawyer and the lawyer has given the client reasonable warning of withdrawal, if a continuation of the representation is likely to result in a violation of the rules, if the client renders it unreasonably difficult for the lawyer to carry

out the representation effectively, or if other good cause for withdrawal exists. Cal. Rules Prof. Conduct 1.16(b).

Movant submits that Movant has attempted to make some arrangement where Movant could continue to represent Defendant, but no arrangement could be reached with Defendant. Gardner Decl., Doc. #59. Defendant has represented to Movant that Defendant's situation makes representation unreasonably difficult for Movant to carry out Defendant's representation. Id. Defendant consents to Movant's withdrawal. Consent, Doc. #66. Movant also submits that between now and the time of the hearing, Movant will continue to assist Defendant to obtain recordings of the California Labor Commission hearings that took place prior to her chapter 7 hearing, as Defendant seeks these recordings as a part of her defense. Id. Movant will also prepare, prior to July 28, 2023, Defendant's initial Federal Rule of Civil Procedure 26(a) disclosures. Id. Movant intends to comply with California Rule of Professional Conduct 1.16(e), which requires Movant to turn over any client materials. Id. It appears that Movant has demonstrated cause for withdrawal.

Accordingly, this motion is GRANTED.

4. [20-13451](#)-A-7     **IN RE: AMANDEEP SINGH**  
[21-1004](#)     [HRH-1](#)

MOTION TO COMPEL  
7-12-2023     [\[54\]](#)

BMO HARRIS BANK, N.A. V. SINGH  
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:     Denied.

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

This motion was set for hearing on at least 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the defendant 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 default of the defendant to this motion is entered. Because the court is denying the motion, the matter will proceed as scheduled.

BMO Harris Bank N.A. ("Plaintiff"), moves for an order compelling Amandeep Singh ("Defendant") to answer interrogatories and produce documents, as well as for sanctions and fees in the amount of \$1,375.00. Doc. #54. Plaintiff moves under Federal Rule of Civil Procedure ("Rule") 37 and Rule 36, made applicable to this adversary proceeding through Federal Rules of Bankruptcy Procedure 7037 and 7036, respectively. Pl.'s Mot., Doc. #54; Ex. 1-4, Doc. #57.

On February 5, 2021, Plaintiff commenced this adversary proceeding by filing its complaint for determination of nondischargeability of debt pursuant to 11 U.S.C. §§ 523(a)(2)(A), (4) and (6) arising out of two loan security agreements. Adv. Proc. No. 21-1004, Doc. #1. Defendant filed his answer on March 8, 2021. Doc. #7. Pursuant to the Order Approving Second Stipulation to

Continue Status Conference and Related Dates, fact discovery was extended from October 26, 2022 to August 14, 2023. Doc. #46. While Defendant was originally represented by counsel, Defendant's counsel withdrew from this adversary proceeding on April 5, 2023, and Defendant now represents himself. Doc. #53.

On May 3, 2023, Plaintiff served Defendant with Plaintiff's First Set of Interrogatories, First Set of Requests for Production of Documents, and First Set of Requests for Admissions. Decl. of Raffi Khatchadourian, Doc. #56. When Plaintiff did not receive a response from Defendant to its written discovery, Plaintiff sent a meet-and-confer letter to Defendant on June 20, 2023 requesting a response no later than June 26, 2023. Id. at ¶ 5. Defendant never responded to the written discovery or the meet-and-confer letter, and Plaintiff filed the instant motion on July 12, 2023. Id.

"On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery." Rule 37(a)(1). The moving party must certify that the moving party "has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." Rule 37(a)(1). Further, Rule 37(a)(5)(i) requires that the court must not order payment of reasonable expenses incurred in filing a motion to compel discovery if Plaintiff "filed the motion before attempting in good faith to obtain the . . . discovery without court action[.]" Fed. R. Civ. P. 37(a)(5)(i).

Here, before filing this motion, Plaintiff only sent one letter to Defendant to which Defendant did not respond. The sending of a "single letter unilaterally identifying flaws in Defendant's discovery responses and setting an arbitrary response deadline for Defendant would seem to be inadequate, as it does not equate to a good faith conferral or attempt to confer." Compass Bank v. Shamgochian, 287 F.R.D. 397, 400 (S.D. Tex. 2012) (collecting and analyzing cases). At a minimum, to establish good faith, counsel for Plaintiff should have "attempted to speak with [Defendant] directly, either by phone or in person, regarding [Defendant's] failure to respond to discovery requests." Benyamini v. O'Brian, 2017 U.S. Dist. LEXIS 144437, at \*7-8 (E.D. Cal. Sept. 5, 2017).

Because Plaintiff filed this motion before attempting in good faith to confer with Defendant to obtain Defendant's response to Plaintiff's Requests for Production, Interrogatories, and Admissions, Plaintiff's motion and Plaintiff's request for attorney's fees in the amount of \$1,375.00 will be DENIED.

5. [21-10679](#)-A-13      **IN RE: SYLVIA NICOLE**  
[21-1015](#)

MOTION TO CONSOLIDATE LEAD CASE 21-01015 WITH 23-01021  
7-17-2023    [\[411\]](#)

NICOLE V. T2M INVESTMENTS, LLC  
RESPONSIVE PLEADING

TENTATIVE RULING:      This matter will proceed as scheduled.

DISPOSITION:              Denied.

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



This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Defendants T2M Investments, LLC ("T2M"), City of Los Banos ("City") and Michael Hughes ("Hughes") each filed timely written opposition. Doc. ##416, 420, 424. The failure of any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

As a procedural matter, the notice of hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(ii), which requires that "the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of any untimely written opposition." Doc. #411. The notice of hearing also does not comply all of with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's pre-hearing dispositions. Finally, the motion and notice of hearing do not comply with LBR 9004-2(c)(1), which requires the motion and notice of hearing to be filed as separate documents. The motion and notice of hearing were filed as a single document. E.g., Doc. #411.

As a further procedural matter, City did not include an Attachment 6A1 to its certificates of service filed in support of its opposition and request for judicial notice showing the names and addresses of the parties served. Doc. ##421, 423. Because the moving party, plaintiff Sylvia Nicole ("Plaintiff"), filed a reply to City's written opposition, the court assumes City's opposition was served properly on Plaintiff.

By the motion, Plaintiff seeks to consolidate adversary proceeding 21-1015 filed by Plaintiff on March 8, 2021 (Adv. Proc. 21-1015, Doc. #1) with adversary proceeding 23-1021 filed by Plaintiff on March 27, 2023 (Adv. Proc. 23-1021, Doc. #1). Plaintiff is a pro se chapter 13 debtor and a pro se plaintiff in both adversary proceedings.

### **Adversary Proceeding 21-1015**

On March 8, 2021, Plaintiff initiated adversary proceeding 21-1015 against defendants Martin Eliopulos, Steven Altman ("Altman"), Cory Chartrand, and T2M. Adv. Proc. 21-1015, Doc. #1. By the initial complaint, Plaintiff asserted ten causes of action against all defendants, primarily for fraud and breach of contract related to a settlement agreement entered into between Plaintiff and T2M in August of 2019. After considering several motions to dismiss in May of 2021, the only remaining defendants were T2M and Altman. On May 27, 2021, the court granted Altman's motion to dismiss in part and denied in part and gave Plaintiff leave to amend causes of action against Altman for breach of contract, contract fraud, mortgage fraud, conspiracy to commit fraud, and contempt. Civil Minutes, Adv. Proc. 21-1015, Doc. #161; Order, Adv. Proc. 21-1015, Doc. #173. On May 27, 2021, the court also granted T2M's motion to dismiss in part and denied it in part and gave Plaintiff leave to amend causes of action against T2M for contract fraud, mortgage fraud, conspiracy to commit fraud, and contempt. Civil Minutes, Adv. Proc. 21-1015, Doc. #162; Order, Adv. Proc. 21-1015, Doc. #175.

Plaintiff's amended complaint was to be filed by June 30, 2021. Adv. Proc. 21-1015, Doc. #175. Plaintiff's amended complaint ("Amended Complaint") was filed on July 1, 2021. Adv. Proc. 21-1015, Doc. #199. The Amended Complaint included causes of action for breach of contract, contract fraud, mortgage fraud,

conspiracy to commit fraud, and contempt. Doc. #199. The allegations in the Amended Complaint stem from a Settlement Agreement and Release dated August 2019 ("Settlement Agreement") executed to resolve Plaintiff's dispute, primarily with T2M, over real property located at 1521 S. 7th Street, Los Banos, CA 93635 (the "Property"). Id. The general scope of the Settlement Agreement called for Plaintiff to convey title of one parcel of the Property, APN 026-091-033, to T2M and, in consideration, T2M was to release any claim or security interest in a vacant lot, identified as parcel 2 of the Property, APN 026-091-032. Ex. A, Adv. Proc. 21-1015, Doc. #200.

On August 26, 2021, the court granted Altman's motion to dismiss the Amended Complaint with prejudice and dismissed all claims against Altman. Civil Minutes, Adv. Proc. 21-1015, Doc. #248; Order, Adv. Proc. 21-1015, Doc. #254. On August 26, 2021, the court granted T2M's motion to dismiss in part and denied it in part, leaving only two causes of action pending against T2M for contract fraud and mortgage fraud. Civil Minutes, Adv. Proc. 21-1015, Doc. #250; Order, Adv. Proc. 21-1015, Doc. #256.

On September 9, 2021, T2M answered Plaintiff's Amended Complaint and filed a counterclaim against Plaintiff, GLVM and Tam Nguyen asserting claims for quiet title, breach of contract, specific performance, enforcement of settlement agreement and declaratory relief. Adv. Proc. 21-1015, Doc. ##259, 261. By the answer and counterclaim, T2M seeks to have, among other things, title to the Property quieted in favor of T2M. Id. After two failed motions to dismiss filed by Plaintiff (Adv. Proc. 21-1015, Doc. ##282, 297), on March 14, 2022, Plaintiff answered the counterclaim. Adv. Proc. 21-1015, Doc. #324. The defaults of GLVM and Tam Nguyen have been taken. Adv. Proc. 21-1015, Doc. ##313, 315.

Based on the parties' representations at a status conference held on November 18, 2021, the court issued a scheduling order with deadlines for close of fact discovery of May 31, 2022 and close of expert discovery of October 31, 2022. Adv. Proc. 21-1015, Doc. #291. A pre-trial conference was set for February 16, 2023. Id.

On January 30, 2023, Plaintiff filed a motion to continue the discovery and pre-trial deadlines for 90 days. Adv. Proc. 21-1015, Doc. #359. At the pre-trial conference held on February 16, 2023, the court continued the pre-trial conference to March 30, 2023, the date of the hearing on Plaintiff's motion to continue discovery and pre-trial deadlines. Adv. Proc. 21-1015, Civil Minutes, Doc. #369. The parties also agreed to a tentative trial date for the week of August 21, 2023. Id. At the hearing on March 30, 2023, the court denied Plaintiff's motion to continue discovery and continued the pre-trial conference to give the parties an opportunity to settle the adversary proceeding. Adv. Proc. 21-1015, Doc. ##375, 376, 378, 379, 382.

The settlement conference was not successful. Adv. Proc. 21-1015, Doc. #386. At a continued pre-trial conference held on June 29, 2023, T2M indicated that it was unavailable to have the trial the week of August 21, 2023, and the court vacated those trial dates. Court Audio, Adv. Proc. 21-1015, Doc. #401. On August 10, 2023, T2M filed a supplemental pre-trial statement in which T2M stated that it does not seek a jury trial in adversary proceeding 21-1015 and consents to final adjudication by this court. Adv. Proc. 21-1015, Doc. #433. On August 14, 2023, Plaintiff filed a pre-trial statement in which Plaintiff stated that Plaintiff consents to a bench trial and consents to final adjudication by this court. Adv. Proc. 21-1015, Doc. #435. Based on the consents by Plaintiff and T2M and the default status of GLVM and Tam Nguyen, adversary proceeding 21-1015 is ready to be set for trial before this court at the continued pre-trial conference set for August 17, 2023 at 11:00 a.m.

## **Adversary Proceeding 23-1021**

On March 27, 2023, Plaintiff initiated adversary proceeding 23-1021 against defendants T2M, City, Hughes, Manuel Ramirez, Monica Monroy and Merced County. Adv. Proc. 23-1021, Doc. #1. By the initial complaint, Plaintiff asserted three causes of action against all defendants. Id. In the first cause of action, Plaintiff asserts fraudulent transfer claims against T2M based on the Settlement Agreement that is the basis of adversary proceeding 21-1015 and seeks to have the Property returned to Plaintiff. Id. In the second cause of action, Plaintiff asserts claims for violation of the automatic stay as to all defendants. Id. In the third cause of action, Plaintiff asserts claims under 42 U.S.C. § 1983 as to all defendants for violation of Plaintiff's civil rights. Id.

Motions to dismiss adversary proceeding 23-1021 were filed by T2M and City. Adv. Pro. 23-1021, Doc. ##12, 24 and 89. On June 30, 2023, the court granted T2M's motion to abstain in part and stayed adversary proceeding 23-1021 pending resolution of adversary proceeding 21-1015. Civil Minutes, Adv. Proc. 23-1021, Doc. #105; Order, Adv. Proc. 23-1021, Doc. #110.

On July 17, 2023, Plaintiff filed this motion to consolidate adversary proceeding 21-1015 and adversary proceeding 23-1021. Adv. Proc. 21-1015, Doc. #411.

### **Relevant Legal Standard**

Pursuant to Federal Rule of Civil Procedure 42(a), incorporated into both adversary proceedings by Federal Rule of Bankruptcy Procedure 7042, adversary proceedings before the bankruptcy court may be consolidated if the actions involve a common question of law or fact. "Whether such proceedings should be consolidated is a matter within the discretion of the court." Bennett v. Morton Bldgs, Inc. (In re Bennett), 2015 Bankr. LEXIS 4107, at \*5 (Bankr. N.D. Ohio Dec. 7, 2015) (citations omitted).

When deciding whether to consolidate two lawsuits, the court must consider:

Whether the specific risks of prejudice and possible confusion [are] overborne by the risk of inconsistent adjudications of common factual and legal issues, the burdens on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

Cantrell v. GAF Corp., 999 F.2d 1007, 1011 (6th Cir. 1993) (quoting Hendrix v. Raybestos-Manhattan, inc., 776 F.2d 1492, 1495 (11th Cir. 1985)). Consolidation may be denied where the cases involved are at different stages of preparedness for trial. Mills v. Beech Aircraft Corp., 886 F.2d 758, 762 (5th Cir. 1989).

### **Analysis**

#### **1. Common Factual and Legal Issues**

Here, only the remaining causes of action (contractual fraud and mortgage fraud) and the counterclaim (claims for quiet title, breach of contract, specific enforcement of settlement agreement, and declaratory relief) in adversary proceeding 21-1015 and the first cause of action (fraudulent transfer) in adversary proceeding 23-1021 have common legal and factual issues. In both instances, the claims for relief relate to the Settlement Agreement

between Plaintiff and T2M regarding the Property. These claims involve acts that took place prior to Plaintiff filing her current chapter 13 case and appear to involve common factual issues.

With respect to the second cause of action for violation of the automatic stay asserted in adversary proceeding 23-1021, that cause of action necessarily involves only actions that took place after Plaintiff filed her current bankruptcy petition because the automatic stay only came into existence in this bankruptcy case after Plaintiff's bankruptcy petition was filed. Thus, all facts related to the violation of stay cause of action arose post-petition and are not common to the legal and factual issues relating to the Settlement Agreement between Plaintiff and T2M regarding the Property at issue in adversary proceeding 21-1015.

Finally, with respect to the third cause of action for violation of Plaintiff's civil rights under 42 U.S.C. § 1983, it is unclear whether the underlying actions took place pre- or post-petition. However, Plaintiff's claims for violations of Plaintiff's civil rights involve legal and factual issues that are not common with the remaining causes of action and counterclaim in adversary proceeding 21-1015. Thus, the third cause of action in the second adversary proceeding does not provide a basis for consolidating adversary proceeding 21-1015 with adversary proceeding 23-1021.

## **2. Risks of Delay, Prejudice and Inconsistent Rulings**

Simply because there are common legal and factual issues between the remaining causes of action and counterclaim in adversary proceeding 21-1015 and the first cause of action in adversary proceeding 23-1021, those common factual and legal issues are not sufficient to consolidate the two proceedings. This is because the two adversary proceedings are at vastly different levels of preparedness for trial. See Mills, 886 F.2d at 762. Discovery is complete in adversary proceeding 21-1015, and adversary proceeding 21-1015 is ready to be set for a bench trial before this court. At the pre-trial conference to be held in adversary proceeding 21-1015 on August 17, 2023 at 11:00 a.m., this court intends to set that bench trial at the earliest time available to the court and the parties. By contrast, the second adversary proceeding was filed only in late March of this year and is still in the pleading stage. Thus, consolidating adversary proceeding 21-1015 with adversary proceeding 23-1021 would unduly delay trial in adversary proceeding 21-1015. This factor alone strongly weighs against consolidation.

In addition, the trial in adversary proceeding 21-1015 involves only Plaintiff and T2M. If this court were to consolidate adversary proceeding 21-1015 with adversary proceeding 23-1021, then additional defendants would be added to the lawsuit. Also, the court would need to rule on the motions to dismiss and, if appropriate, answers would need to be filed, and discovery would need to be scheduled and conducted take place before a trial could even be contemplated. That would unfairly and unduly delay adjudication of the remaining causes of action and counterclaim in the first adversary proceeding. Under such factors, the court will not exercise its discretion to consolidate adversary proceedings 21-1015 and adversary proceeding 23-1021.

## **Conclusion**

After due consideration of the facts and the relevant law, the motion to consolidate will be denied.

6. [21-10679](#)-A-13     **IN RE: SYLVIA NICOLE**  
[21-1015](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT  
7-8-2021     [[203](#)]

NICOLE V. T2M INVESTMENTS, LLC

NO RULING.

7. [21-10679](#)-A-13     **IN RE: SYLVIA NICOLE**  
[21-1015](#)     [CBC-8](#)

MOTION TO EXCLUDE EVIDENCE  
7-6-2023     [[405](#)]

NICOLE V. T2M INVESTMENTS, LLC  
CORY CHARTRAND/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.