

**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, August 31, 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. [22-10323](#)-B-13 **IN RE: DONALD/PAULA ROBINSON**
[MHM-1](#)

MOTION TO DISMISS CASE
8-12-2022 [[32](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/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.

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(c)(4) for failure to make all payments due under the confirmed plan. Doc #32. Debtors did not oppose.

However, on August 30, 2022, the Debtors voluntarily converted the case to chapter 7. Doc. #36. Accordingly, the chapter 13 trustee's motion will be DENIED AS MOOT because the case has already been converted.

2. [22-11330](#)-B-13 **IN RE: GENEVA FARR**
[DJ-2](#)

MOTION TO EXTEND AUTOMATIC STAY
8-16-2022 [[22](#)]

GENEVA FARR/MV
DUSHAWN JOHNSON/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Geneva Farr ("Debtor") requests an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #22.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

As a preliminary matter, the notice of hearing does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the movant to notify respondents that they can (a) determine whether the matter has been resolved without oral argument; (b) determine whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Ordinarily, this procedural defect would result in the motion being denied without prejudice. However, the court finds that it would cause unnecessary and undue harm to Debtor given the expiration of the automatic stay on September 1, 2022. Therefore, the court will overlook this procedure deficiency under LBR 1001-1(f) by suspending LBR 9014-1(d)(3)(B)(iii) in this instance only. Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay under subsection (a) shall terminate on the 30th day after the latter case is filed. Debtor had one case pending within the preceding one-year period that was dismissed: Case No. 22-11072.¹ That case was filed on June 28, 2022 and dismissed on July 27, 2022 for failure to timely file documents. This case was filed on August 2, 2022. Doc. #1. The automatic stay will expire on September 1, 2022.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. § 362(c)(3)(C). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are

'highly probable.' Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition.'" *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by *Taggart v. Lorenzen*, 139 S. Ct. 1785 (2019)).

In this case, the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith as to all creditors because Debtor has more than one previous case under chapter 13 that was pending within the preceding one-year period and Debtor failed to file or amend the petition or other documents as required by the bankruptcy code or the court without substantial excuse. § 362(c)(3)(C)(i)(I), (c)(3)(C)(i)(II).

Debtor declares that the previous bankruptcy case was filed as a "skeleton" petition to avoid a foreclosure sale of real property, which Debtor intends to reside in after the sale of Debtor's primary residence. Doc. #24. Debtor was unable to assemble the documents necessary to prepare the *Attorney Disclosure Statement, Schedules A-J, Statement of Financial Affairs, Summary of Schedules, and Chapter 13 Plan* (collectively, the "Required Documents") before the due date, so the case was dismissed. *Id.*

Debtor claims to have always had the intention to sell the primary residence to secure the funds necessary to bring the mortgages on Debtor's other homes current. *Id.* Debtor believes the primary residence is worth nearly \$600,000, so after payment of the current \$150,000 mortgage and costs of sale, Debtor expects to have funds to pay all creditors and cure any arrears on the remaining mortgages. *Id.*

Although Debtor's previous bankruptcy was dismissed, Debtor was unsure that a second petition would be necessary. *Id.* Debtor's realtor purportedly assured Debtor that a postponement of the foreclosure sale would be negotiated upon informing the lender that the primary residence would soon be listed on the open market. *Id.* Since the sale was not postponed, Debtor was required to file this second bankruptcy on August 2, 2022. However, Debtor's "finances are in disarray with many of [Debtor's] important documents scattered." *Id.* Debtor had great difficulty locating information necessary to complete the Required Documents. Since then, most have been located and provided to Debtor's attorney. Debtor believes that all Required Documents will be filed shortly. *Id.*

Debtor has filed all of the Required Documents except the *Chapter 13 Plan*. Doc. #1. The original deadline to file a plan was August 16, 2022, but Debtor obtained an extension of time to August 30, 2022. Doc. #20.

According to the schedules, Debtor earns \$5,577.61 in monthly income and incurs \$2,770.57 in monthly expenses. Doc. #1, *Scheds, I, J*. This results in \$2,807.04 in monthly net income that could be used to pay

creditors whose claims are allowed in this case. The court will inquire at the hearing whether Debtor filed a plan by the August 30, 2022 deadline.

Based on the moving papers and the record, if Debtor files and sets for hearing a plan by the August 30, 2022 deadline, the presumption will appear to have been rebutted by clear and convincing evidence. Additionally, Debtor's circumstances and financial condition have materially changed in that Debtor located the documents needed to prepare and file the Required Documents, and now previously missing evidence of Debtor's financial condition has been submitted. If the plan is filed, Debtor's petition will appear to have been filed in good faith provided that the proposed plan is feasible.

This matter will be called and proceed as scheduled. In the absence of opposition at the hearing, this motion may be GRANTED. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2).

¹ Debtor also filed a joint chapter 13 bankruptcy case on July 3, 2014 that was dismissed on September 28, 2015. Case No. 14-13396.

3. [22-11035](#)-B-13 **IN RE: DONALD/STEPHANIE SALKIN**
[BDB-2](#)

MOTION TO VALUE COLLATERAL OF VALLEY FIRST CREDIT UNION
8-2-2022 [\[29\]](#)

STEPHANIE SALKIN/MV
BENNY BARCO/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 accordance with the ruling below.

Donald Lee Salkin and Stephanie Austin Salkin (collectively, "Debtors") seek an order valuing a 2018 Ford Explorer with 69,000 ("Vehicle") miles at 28,000.00..² Doc. #29. Vehicle is encumbered by a purchase money security interest in favor of Valley First Credit Union ("Creditor") in the amount of \$29,915.16..³ Claim No. 16-1; *cf.* Doc. #1, *Sched. D.*

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

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

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

11 U.S.C. § 1325(a) (*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) that collateral is personal property other than a motor vehicle acquired for the personal use of the debtor, and (3) the debt was incurred within one year preceding the filing of the petition.

Joint debtor Stephanie Salkin declares that Debtors purchased Vehicle in April 2018. Doc. #63. Debtors filed bankruptcy on June 22, 2022, so 910 days before the petition date is December 25, 2019. Thus, the debt here was incurred more than 910 days preceding the filing of the petition, so the elements of § 1325(a) (*) are not met and § 506 is applicable.

11 U.S.C. § 506(a) (1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

11 U.S.C. § 506(a) (2) states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

Ms. Salkin declares that the replacement value of Vehicle is \$28,000.00 as of the petition date. Doc. #31. This opinion is based on personal knowledge of the vehicle as its owner and familiarity with the vehicle and similar vehicles of the same make, model, and age. Ms. Salkin declares that Vehicle: (1) is approximately four years old; (2) has approximately 69,000 miles on it; (3) has four years of interior wear and tear; (4) has a "small ding" in the door; and (5) needs new breaks and a tune up. Based on the current condition, Ms. Salkin does

not believe that anyone trying to sell it would get any more than \$28,000.00 for it.

The joint debtor is competent to testify as to the replacement value of the Vehicle as its owner. Fed. R. Evid. 701. Given the absence of contrary evidence, Debtors' opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No party in interest timely filed written opposition.

Accordingly, this motion will be GRANTED. Creditor's secured claim will be fixed at \$28,000.00. The proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

² The court notes that Debtors prevailed on a motion to value Vehicle at \$25,100.00 in their previous bankruptcy. Case No. 21-10300, Docs. #73; #75.

³ Debtors complied with Fed. R. Bankr. P. 7004(h) by serving Kathryn J. Davis, Creditor's President & CEO, at Creditor's main office address on August 2, 2022. Doc. #33; see also <https://www.valleyfirstcu.org/leadership> (visited Aug. 29, 2022).

4. [22-10339](#)-B-13 **IN RE: ELIZABETH VALVERDE**
[TCS-1](#)

MOTION TO SELL AND MOTION TO INCUR DEBT
8-17-2022 [\[34\]](#)

ELIZABETH VALVERDE/MV

TIMOTHY SPRINGER/ATTY. FOR DBT.

AMENDED NOTICE CONTINUING HEARING TO 9/8/22 WITHOUT AN ORDER

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

This motion to sell was filed on August 17, 2022 and originally scheduled for hearing on August 31, 2022 at 9:30 a.m. Doc. #35. It was filed under the 14-day notice procedure specified in Local Rule of Practice ("LBR") 9014-1(f)(2) in which written opposition is not required and may be presented at the hearing. However, Federal Rule of Bankruptcy Procedure ("Rule") 2002(a)(2) requires 21 days' notice of any proposed sale of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice.

The following day, an amended notice of hearing was filed and served, setting the hearing for September 8, 2022 at 9:30 a.m. Doc. #39. Now, the motion is set for hearing on 21 days' notice in compliance with Rule 2002(a)(2). But the amended notice states,

YOU ARE HEREBY NOTIFIED that pursuant to Local Rule of Practice 9014(f)(1), opposition, if any, to the Court granting this Motion, shall be in writing and shall be served and filed with the Clerk by the Responding Party not less than Fourteen Calendar Days (14) preceding the date or continued date of the hearing. Opposition shall be accompanied by evidence establishing its factual allegations. Without good cause, no party shall be heard in opposition to the motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the Motion without further argument or may result in the imposition of sanctions.

. . .

Doc. #39. This is incorrect. Because the hearing was set on less than 28 days' notice under LBR 9014-1(f)(2), the notice should have stated that no written opposition was required, and any opposition may be presented at the hearing.

Additionally, continuances without a court order are not permitted under the local rules. LBR 9014-1(j). Although LBR 9014-1(j) permits oral requests for continuances if made at the scheduled hearing, or in advance by written application, the above notice-language defect is fatal and prevents a successful oral request for continuance at the hearing.

Accordingly, this motion will be DENIED WITHOUT PREJUDICE for failure to comply with the local rules.

5. [19-14040](#)-B-13 **IN RE: EARL/JOSIE BOYD**
[FW-8](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
8-3-2022 [\[74\]](#)

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 Earl Lee Boyd and Josie Autencio Boyd (collectively, "Debtors"), seeks compensation in the sum of \$8,115.96 on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Doc. #74. This amount consists of \$7,864.50 in fees as reasonable compensation for services rendered and \$251.46 for reimbursement of actual, necessary expenses from June 16, 2020 through June 30, 2022.

Debtors executed a statement dated July 31, 2022 indicating that they have read the fee application and approve the same. Doc. #77, *Ex. E*. Further, Debtors understand that if the fees reserved in the plan are insufficient to cover the amount owed and approved, the balance of fees will be nondischargeable. *Id.*

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the 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.

Debtors filed chapter 13 bankruptcy on September 25, 2019. Doc. #1. The *Chapter 13 Plan* dated September 25, 2019, confirmed January 7, 2020, is the operative plan in this case. Docs. #2; #43. Section 3.05 provides that Applicant was paid \$3,190.00 prior to filing the case and, subject to court approval, an additional \$12,000.00 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 \$3,190.00 plus the \$310.00 filing fee, for a total of \$3,500.00 in pre-petition payments. Doc. #74. These amounts are reflected in Applicant's *Disclosure of Compensation* dated September 25, 2019. Doc. #1.

This is Applicant's second interim fee application. On July 29, 2020, Applicant was awarded \$4,192.00 in fees and \$386.00 in costs, totaling \$4,578.00, for services rendered and costs incurred from May 1, 2019 through June 15, 2020. Docs. ##51-52. Those costs included the \$310.00 filing fee, so after application of \$3,500 in pre-petition payments,

\$1,078.00 would remain to be paid through the plan. Doc. #46. The source of funds for this application will be solely from the chapter 13 trustee in accordance with the plan. There appears to remain \$10,922.00 in available funds for attorney fees in the plan.

Applicant's firm provided 26.60 hours of legal services at the following rates, totaling **\$7,864.50** in fees:

Professional	Rate	Hours	Total
Katie Waddell (no charge)	\$0	0.30	\$0.00
Gabriel J. Waddell (no charge)	\$0	0.6	\$0.00
Gabriel J. Waddell (2020)	\$320	3.20	\$1,024.00
Gabriel J. Waddell (2021)	\$330	19.80	\$6,534.00
Gabriel J. Waddell (2022)	\$345	0.10	\$34.50
Kayla Schlaak (2020)	\$100	1.40	\$140.00
Kayla Schlaak (2021)	\$110	1.20	\$132.00
Total Hours & Fees		26.30	\$7,864.50

Doc. #77, Exs. B, C. Applicant also incurred **\$251.46** in expenses:

Photocopying	\$104.40
Postage	+ \$102.06
CourtCall Fees	+ \$45.00
Total Costs	= \$251.46

Id., Ex. B. These combined fees and expenses total **\$8,115.96**.

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

Applicant's services included, without limitation: (1) analyzing issues related to an erroneous proof of claim, communicating with the creditor regarding that claim, and analyzing the amended claim; (2) analyzing correspondence from the trustee regarding plan payments; (3) preparing motions to incur debt so Debtors could purchase a new vehicle (FW-6; FW-7);⁴ (4) finalizing the first interim fee application (no charge; FW-5); (5) communicating with Debtors regarding case administration and analyzing creditor correspondence; and (6) preparing and filing this fee application (FW-8). Doc. #77, Ex. A. The court finds the services and expenses actual, reasonable, and necessary. No party in interest filed opposition, there are sufficient

funds available in the plan, and Debtors have consented to payment of the proposed fees. *Id.*, *Ex. E*.

Accordingly, this motion will be GRANTED. Applicant shall be awarded \$7,864.00 in fees and \$251.46 in reimbursement of expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Trustee will be authorized, in Trustee's discretion, to pay Applicant \$8,115.96 in accordance with the confirmed plan for services rendered to and expenses incurred for the estate from June 16, 2020 through June 30, 2022.

⁴ The first motion to incur debt was denied due to the high interest rate. Docs. ##65-66. Thereafter, Debtors obtained permission with the trustee's consent to incur up to \$8,000 in new debt to purchase a vehicle. Doc. #72.

6. [19-12843](#)-B-13 **IN RE: DONNIE EASON**
[MHM-1](#)

MOTION TO DISMISS CASE
8-3-2022 [\[39\]](#)

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

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

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

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay that is prejudicial to creditors and (c)(6) for material default by the debtor with respect to a term of a confirmed plan. Doc. #39.

Trustee says that the confirmed plan's 36-month term completed in July 2022. However, the proposed payments were insufficient to fund the case by month 36 and as of August 3, 2022, payments are delinquent in the amount of \$2,218.92. Doc. #41. The plan states, "[i]f necessary to complete the plan, monthly payments may continue for an additional 6 months, but in no event shall monthly payments continue for more than 60 months." Doc. #3, Section 2.03. But based on Trustee's calculations, even if Debtor continues making regular payments through month 42, there will not be sufficient funds to pay off the case. Doc. #41.

Donnie L. Eason ("Debtor") timely filed opposition. Docs. ##51-52. Debtor has filed a modified plan that is set for hearing on September

28, 2022, which Debtor believes will cure the deficiencies raised by Trustee. FW-2.

Accordingly, Trustee's motion to dismiss will be CONTINUED to September 28, 2022 at 9:30 a.m. to be heard in connection with Debtor's motion to modify plan.

7. [18-10764](#)-B-13 **IN RE: CYNTHIA SANCHEZ**
[MHM-1](#)

OBJECTION TO NOTICE OF INTENT TO ENTER DISCHARGE BY MICHAEL
H. MEYER
7-21-2022 [[50](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Sustained.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to the *Notice of Intent to Enter Chapter 13 Discharge* (Doc. #48, the "Notice") because Cynthia A. Sanchez's ("Debtor") *11 U.S.C. § 1328 Certificate* (Doc. #40) erroneously indicates that Debtor has not received a discharge in a Chapter 7, 11, or 12 bankruptcy case filed within four years of this case as required by 11 U.S.C. § 1328(f). Since Debtor received a chapter 7 discharge on October 6, 2014, Debtor is not eligible for a discharge under 11 U.S.C. § 1328(f). Therefore, Trustee asks that Debtor's discharge be denied.

Debtor filed non-opposition, agreeing that the prior case was filed less than four years before the present case. Doc. #53.

The objection was set for hearing on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and within 14 days of the filing of the Notice pursuant to LBR 5001(d). 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 sustaining of the objection. *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 objector has done here.

Pursuant to LBR 5001-1(c), Trustee objected to the Notice under § 1328(f) to Debtor's discharge on July 21, 2022 because Debtor received a discharge within four years of the petition date. Doc. #50.

11 U.S.C. § 1328(f) provides that the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502 if the debtor has received a discharge in a case filed under chapter 7 during the 4-year period preceding the petition date.

The court notes that Federal Rule of Bankruptcy Procedure ("Rule") 4004(a) establishes the time for objecting to discharge. In a chapter 13 case, a motion objecting to the debtor's discharge under 11 U.S.C. § 1328(f) shall be no later than 60 days after the first date set for the meeting of creditors. Rule 4004(a). The meeting of creditors was first held on April 17, 2018, so the deadline to object to Debtor's discharge was June 16, 2018.

Parties in interest may request an extension of time under Rule 4004(b), but no such extension has been requested here. If requested after the time for objection has expired and before discharge is granted, the objection must be based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. Rule 4004(b)(2). The motion shall also be filed promptly after the movant discovers the facts on which the objection is based.

However, the Supreme Court has held that a debtor forfeits the right to rely on Rule 4004(a) if the debtor does not raise the time limitation in an answer or responsive pleading before the bankruptcy court reaches the merits of an objection to discharge. *Kontrick v. Ryan*, 540 U.S. 443, 458-60 (2004). Additionally, § 1328(f) is mandatory, not permissive, and Debtor has filed non-opposition to this objection.

Accordingly, since Debtor received a chapter 7 discharge in the four years prior to this case being filed, Debtor is ineligible to receive a discharge in this case. Therefore, Trustee's objection will be SUSTAINED, and Debtor's discharge will be denied.

8. [22-10974](#)-B-13 **IN RE: FRANCISCO SAMANIEGO**
[MHM-1](#)

MOTION TO DISMISS CASE
8-2-2022 [\[23\]](#)

MICHAEL MEYER/MV
T. O'TOOLE/ATTY. FOR DBT.

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

DISPOSITION: Granted as modified, and case converted to Chapter 7.

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. Doc #23. 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 failed to provide required documentation to the trustee, failed to appear at the 341 Meeting of Creditors, failed to file a Plan, failed to file all tax returns as required by 11 U.S.C. § 1308(a), and failed to make timely plan payments. Doc. #25.

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.

In addition, the trustee has determined that this case may have undisclosed income and funds in the amount of \$23,000 from income tax refunds that may be of benefit to the estate in a Chapter 7. Doc. #23. 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.

11:00 AM

1. [20-10809](#)-B-11 IN RE: STEPHEN SLOAN
[22-1007](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-1-2022 [[1](#)]

SLOAN V. SLOAN
PETER SAUER/ATTY. FOR PL.

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

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

ORDER: The court will issue an order.

The court is in receipt of the *Plaintiff's Status Report* dated August 24, 2022. Doc. #29. Plaintiff now has reconveyance deeds for each of the properties for which avoidance was sought.

The claims for relief in this adversary proceeding are substantially similar to those raised in *Sandton Credit Solutions Master Fund IV, LP v. Stephen William Sloan et al.*, Adv. Proc. No. 21-01039, which involves this same Plaintiff and Defendant. *Id.* Resolution here will likely resolve most, if not all, of those raised in that case. As a result, Plaintiff has asked counsel for Sandton Credit Solutions Master Fund IV, LP, if his client has no objection to dismissal of the instant adversary proceeding. *Id.* Alternatively, Plaintiff believes that Sandton may seek consolidation of the instant matter and its own adversary proceeding, and then dismiss all causes of action that have been resolved by recording the deeds referenced above.

Accordingly, this status conference will be CONTINUED to September 28, 2022 at 11:00 a.m. to be heard in connection with the Sandton v. Sloan status conference. Plaintiff shall file and serve a status report not later than 7 days before the continued status conference. All other parties are invited, but not required, to file a status report not later than 7 days before the continued status conference.