

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, September 8, 2022
Place: Department A - 510 19th Street
Bakersfield, California

**ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)**

Pursuant to District Court General Order 631, courthouses for the Eastern District of California were reopened to the public effective June 14, 2021.

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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. [19-13701](#)-A-13 **IN RE: PAUL/KATHERINE MCCURRY**
[DMG-5](#)

CONTINUED MOTION TO SELL
8-2-2022 [[93](#)]

KATHERINE MCCURRY/MV
D. GARDNER/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.

This motion was filed and served on at least 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. At the prior hearing on the motion, the court continued the hearing to permit the debtors to supplement the record with respect to a new purchaser for the real property that is the subject of the motion. The court permitted further opposition to the motion to be presented at the continued hearing. 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 consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Paul McCurry and Katherine McCurry (collectively, "Debtors") initially petitioned the court for an order authorizing Debtors to sell real property located at 760 Maple Ave., Wasco, CA 93280 (the "Property") to Rosa M. Barrera Alvarez and Mauro G. Almaraz (together, "Buyers") for \$260,000.00. Doc. #93. Debtors have a fee simple ownership interest in the Property. Schedule A/B, Doc. #1. Debtors' confirmed chapter 13 plan does not re-vest property of the estate in Debtors upon confirmation. Plan, Doc. #48; Order, Doc. #70. On August 22, 2022, Debtors' attorney filed a declaration informing the court that Buyers have backed out of the proposed sale. Decl. of D. Max Gardner, Doc. #104.

By the motion, Debtors also asked that Debtors be granted authority to sell the Property to any third party for no less than \$250,000 in the event the sale to Buyer falls through. Doc. #95. By declaration filed on August 22, 2022, Debtors received and accepted an offer for the Property from Michelle Kerchner for \$250,000. Gardner Decl., Doc. #104. Debtors request the court authorize this sale. Id.

LBR 3015-1(h)(1)(E) provides in relevant part that "if the debtor wishes to . . . transfer property on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1." LBR 3015-1(h)(1)(E).

A debtor proposing a sale of property of the estate outside of the ordinary course of business under § 363(b) must demonstrate, among other things, that the sale is proposed in good faith. 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996). "Good faith encompasses fair value, and further speaks to the integrity of the transaction." Id. (quoting In re Wilde Horse Enters., Inc. 136 B.R. 830, 842 (Bankr. C.D. Cal. 1991)). To make such a determination, "the court and creditors must be provided with sufficient information to allow them to take a position on the proposed sale." Wilde Horse Enters., 136 B.R. at 842. When approving a proposed sale, the bankruptcy court should consider whether the sale is in the best interests of the estate, is for a fair and reasonable price, has been adequately marketed, and is an "arms-length" transaction. Id. at 841.

On September 1, 2022, Debtors filed a further declaration of joint debtor Katherine McCurry ("Supp. Decl. of Katherine McCurry") as well as a copy of the purchase agreement with Michelle Kerchner. Doc. ##110, 111. Joint debtor Katherine McCurry asserts the proposed sale will benefit their estate by allowing Debtors to pay the balance owed on their chapter 13 plan. Supp. Decl. of Katherine McCurry, Doc. #110. The Property is owned by Debtors free and clear of a mortgage, and Debtors claimed the Property as fully exempt. Decl. of Katherine McCurry, Doc. #84; Schedule C, Doc. #1. After a six percent commission is shared between the listing agent and Ms. Kerchner's agent, the chapter 13 trustee will receive funds at escrow necessary to pay the balance owed on Debtors' chapter 13 plan. Supp. Decl. of Katherine McCurry, Doc. #110. Based on the evidence before the court, Michelle Kerchner is a qualified buyer and the proposed sale is an "arms-length" transaction. Id. The court finds that the sale of the Property is in the best interests of the estate and will result in full payment of Debtors' confirmed chapter 13 plan.

Accordingly, this motion is GRANTED. Debtors are authorized, but not required, to sell the Property to Michelle Kerchner in a manner consistent with the residential purchase agreement filed as Exhibit A, Doc. #111.

2. [21-12820](#)-A-13 **IN RE: CLYDE/HEATHER DUNN**
[RSW-1](#)

MOTION TO CONFIRM PLAN
8-4-2022 [[57](#)]

HEATHER DUNN/MV
ROBERT WILLIAMS/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 August 23, 2022, the chapter 13 trustee filed an objection to the debtors' motion to confirm the chapter 13 plan. Doc. #63. On August 25, 2022, Creditor NewRez LLC d/b/a Shellpoint Mortgage Servicing ("Creditor") filed an objection to plan confirmation.

Doc. #66. The failure of other 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.

As a procedural matter, the motion and supporting papers do not comply with LBR 9014-1(c). Counsel for the debtors use the same DCN for this motion that was used for a prior motion to substitute in as counsel in violation of LBR 9014-1(c)(4). Compare Doc. #54 with Doc. #57. A new DCN should have been used for this motion. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

Clyde N. Dunn III and Heather L. Dunn (collectively, "Debtors") filed their chapter 13 plan (the "Plan") on July 19, 2022. Doc. #52. Michael Meyer, the chapter 13 trustee ("Trustee"), and Creditor object to confirmation of the Plan. Tr.'s Obj., Doc. #63; Creditor's Obj., Doc. #66.

Trustee objects to confirmation of the Plan on two grounds. First, Trustee contends that the Plan unfairly discriminates between classes of unsecured creditors in violation of 11 U.S.C. § 1322(b). Tr.'s Obj., Doc. #63. The Plan proposes to pay the claim of Safe 1 Credit Union ("Safe 1"), the secured creditor on Debtors' 2019 Infiniti QX60, in full. Plan, Doc. #52. However, Safe 1 is undersecured. Claim 16. By paying Safe 1 in full, Safe 1 would receive 100% payment on the unsecured portion of its claim while other unsecured creditors will receive 0% under the Plan. Tr.'s Obj., Doc. #63. The court agrees that the undersecured portion of Safe 1's claim should not receive better treatment than other general unsecured creditors.

Second, Trustee objects to confirmation because the Plan does not provide for all projected disposable income to be applied to unsecured creditors under the plan. Tr.'s Obj., Doc. #63. Upon the objection of the trustee or the holder of an allowed unsecured claim, 11 U.S.C. § 1325(b) requires the plan provide for all of a debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b). Mr. Dunn testified at the § 341 meeting of creditors that he had recently changed employment, so Schedules I and J and Debtors' Form 122C-2 need to be amended to reflect Debtors' current income and employment-related expenses. Tr.'s Obj., Doc. #63. Trustee also requests verification of Mr. Dunn's current income. Id.

Creditor objects to confirmation of the Plan on the grounds that: (1) the monthly Plan payments on Creditor's arrears do not start until month 12 of the Plan, so the Plan does not cure Creditor's arrears in a reasonable time; and (2) the Plan is not feasible because Debtors are unemployed and there is insufficient evidence that Debtors will obtain employment within 12 months that will generate enough income to fund the Plan. Creditor's Obj., Doc. #66. Based on the testimony of Mr. Dunn at the meeting of creditors, it appears that Mr. Dunn may now be employed so there is no basis for delaying monthly Plan payments on Creditor's arrears.

Because the objections filed to the Plan should be sustained, the motion to confirm the Plan is DENIED.

3. [22-10026](#)-A-13 **IN RE: ARTURO RAMIREZ**
[MHM-1](#)

MOTION TO DISMISS CASE
7-22-2022 [[18](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

4. [22-10026](#)-A-13 **IN RE: ARTURO RAMIREZ**
[RSW-1](#)

MOTION TO CONFIRM PLAN
8-4-2022 [[22](#)]

ARTURO RAMIREZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

5. [21-10928](#)-A-13 **IN RE: ALICE CAMERON**
[MHM-2](#)

MOTION TO DISMISS CASE
8-10-2022 [[70](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

6. [19-10444](#)-A-13 **IN RE: KEVIN FISHER**
[MHM-1](#)

MOTION TO DISMISS CASE
7-14-2022 [[29](#)]

MICHAEL MEYER/MV
VINCENT GORSKI/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 28 days' notice as required by 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 under 11 U.S.C. § 1307(c)(1) and (c)(6) for failure to complete the terms of the confirmed plan. Doc. #29. The debtor 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) and (c)(6) for failure to complete the terms of the confirmed plan. As of July 14, 2022, the debtor is delinquent in the amount of \$2,441.06. The plan payments for July 25, 2022, in the amount of \$1,891.93 will come due prior to this hearing.

In reviewing the case, the chapter 13 trustee notes that the debtor has opted to claim exemptions under the California Code of Civil Procedure section 704 scheme. As of right now, there is a liquidation amount of \$19,612.24, after trustee compensation. Decl. of Kelsey A. Seib, Doc. #31. This liquidation amount is comprised of the value of the debtor's real property and 2018 tax refund. Id. If the debtor were to amend his 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. A review of the debtor's schedules indicates that there is sufficient non-exempt equity to pay unsecured creditors in full. Doc. #1. Based on the amount of equity in the debtor's bankruptcy estate, the court finds that 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.

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
8-19-2022 [[28](#)]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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 filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Karla Imelda Garcia ("Debtor") filed a voluntary petition under chapter 13 on July 7, 2022. Doc. #1. Debtor filed a chapter 13 plan ("Plan") on July 20, 2022. Doc. #22. Michael Meyer, the chapter 13 trustee ("Trustee"), objects to confirmation of the Plan because (1) the Plan has several errors, including that the plan payment and plan term are left blank and the mortgage and automobile secured creditors are listed in both Class 1 and Class 2, (2) the schedules have several errors and most of the schedules are blank, and (3) the meeting of creditors has not yet concluded. Doc. #28.

Rather than continue the hearing on Plan confirmation to allow the meeting of creditors to be concluded, the court is inclined to sustain the objection and deny confirmation because the Plan is not confirmable as filed.

The Plan does not provide for any dollar amount for a monthly plan payment and does not specify the term of the Plan. Plan, Doc. #22. A plan must state a specific dollar amount for monthly plan payments in section 2.01 of the plan or provide such other information in section 7 of the plan so Trustee, creditors and the court know how much money Debtor will be paying each month on account of the proposed plan. Likewise, a plan must specify the number of months the monthly plan payments will be paid in section 2.03 of the Plan before the proposed plan can be confirmed. The Plan also lists PennyMac Loan Services ("PennyMac") and GM Financial ("GM") in both Class 1 and Class 2 of the Plan. Doc. #22. Debtor cannot provide for PennyMac and GM in both Class 1 and Class 2 of the Plan. Instead, Debtor must list PennyMac in only Class 1, Class 2, Class 3 or Class 4, as appropriate, and GM in only Class 1, Class 2, Class 3 or Class 4, as appropriate.

Accordingly, pending any opposition at the hearing, the objection will be SUSTAINED.

8. [19-14252](#)-A-13 **IN RE: MICHAEL/LUCIA LOPEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
8-10-2022 [[131](#)]

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

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

DISPOSITION: Granted.

ORDER: The court will issue an 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 28 days' notice as required by 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). 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 under 11 U.S.C. § 1307(c)(1) and (c)(6) for failure to complete the terms of the confirmed plan. Doc. #131. 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) and (c)(6) for failure to complete the terms of the confirmed plan. As of August 10, 2022, the debtors are delinquent in the amount of \$2,909.00. The plan payments for August 25, 2022, in the amount of \$485.00 will come due prior to this hearing.

A review of the debtors' Schedules A/B and D shows that the debtors' real property is fully encumbered and exempt and the debtors' personal property is overencumbered. Doc. #1. Therefore, the court determines that dismissal rather than conversion is in the best interest of creditors of the estate.

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

9. [20-12578](#)-A-13 **IN RE: MARIO/SUSANA GONZALEZ**
[RSW-3](#)

CONTINUED MOTION TO MODIFY PLAN
6-15-2022 [[68](#)]

SUSANA GONZALEZ/MV
ROBERT WILLIAMS/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.

Debtors Mario Gonzalez and Susana Resendez Gonzalez (collectively, "Debtors") filed and served this motion to confirm the second modified chapter 13 plan pursuant to Local Rule of Practice ("LBR") 3015-1(d)(2) and set for hearing on August 4, 2022. Doc. ##68-73. The chapter 13 trustee ("Trustee") filed an opposition to Debtors' motion. Doc. #77. The court continued this matter to September 8, 2022 and ordered Debtors to file and serve a written response to Trustee's objection by August 18, 2022; or if Debtors elected to withdraw this plan, then Debtors had to file, serve, and set for hearing a confirmable modified plan by August 25, 2022. Doc. #81.

Debtors have not voluntarily converted this case to chapter 7 or dismissed this case, and Trustee's objection has not been withdrawn. Further, Debtors have not filed, served, and set for hearing a confirmable modified plan by the time set by the court. Debtors did file and serve a written response to Trustee's objection, but that response was filed and served on August 25, 2022, not by August 18, 2022, as ordered by the court. Doc. ##84-87.

Because Debtors did not comply timely with the court's prior order, Debtors' motion to confirm their first modified chapter 13 plan is DENIED on the grounds set forth in Trustee's opposition.

10. [22-10779](#)-A-13 **IN RE: JACKIE OATS**
[RSW-1](#)

MOTION TO CONFIRM PLAN
7-13-2022 [[20](#)]

JACKIE OATS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

11. [21-11788](#)-A-13 **IN RE: JAVIER/DANIELLE DE OCHOA**
[RSW-2](#)

MOTION TO MODIFY PLAN
7-19-2022 [[67](#)]

DANIELLE DE OCHOA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 6, 2022.

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)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #77. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than September 15, 2022. 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 debtors' position. Trustee shall file and serve a reply, if any, by September 22, 2022.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than September 22, 2022. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

12. [19-12898](#)-A-13 **IN RE: JEFFREY VANDERNOOR**
[MHM-3](#)

MOTION TO DISMISS CASE
8-4-2022 [[125](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 6, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to be heard with the debtor's motion to confirm third modified plan filed on August 31, 2022 (Doc. #131) and set for hearing on October 6, 2022 at 9:00 a.m.

10:00 AM

1. [21-10561](#)-A-7 **IN RE: SHELTON MCKENZIE**
[PLG-2](#)

MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION
7-28-2022 [[23](#)]

SHELTON MCKENZIE/MV
L. RODKEY/ATTY. FOR DBT.

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

DISPOSITION: Continued to November 3, 2022, at 10:00 a.m.

NO ORDER REQUIRED.

The parties have stipulated to continue the hearing on the motion for sanctions to November 3, 2022, at 10:00 a.m. The court has already issued an order on August 30, 2022. Doc. #35.

10:30 AM

1. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[GAG-1](#)

CONTINUED STATUS CONFERENCE RE: OBJECTION TO CLAIM OF NINO GLOBAL, LLC,
CLAIM NUMBER 13, OBJECTION TO CLAIM OF NINO GLOBAL, LLC, CLAIM NUMBER 14,
OBJECTION TO CLAIM OF PLATINUM FARMS SERVICES, LLC, CLAIM NUMBER 16,
OBJECTION TO CLAIM OF NINO GLOBAL, LLC, CLAIM NUMBER 17
5-24-2021 [[593](#)]

AMALIA GARCIA/MV
LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

At the status conference, the parties should be prepared to explain to the court why they did not file a joint status report by September 1, 2022 as ordered by Amended Scheduling Order re: Consolidated Objections to Claims filed on April 20, 2022, Doc. #979.

2. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
7-22-2021 [[1](#)]

LEONARD WELSH/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.

The status conference will be continued to September 28, 2022, at 9:30 a.m., to be heard with the debtor's motion to confirm plan.

3. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[LKW-16](#)

MOTION TO CONFIRM CHAPTER 11 PLAN
7-22-2022 [[238](#)]

MARK FORREST/MV
LEONARD WELSH/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.

NO ORDER REQUIRED.

On September 6, 2022, the court issued an order continuing the confirmation hearing to September 28, 2022 at 9:30 a.m. Doc. #302.

4. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[LKW-17](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
8-3-2022 [[254](#)]

LEONARD WELSH/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 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(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 movant has done here.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtor and debtor in possession Mark Alan Forrest ("DIP"), requests allowance of interim compensation in the amount of \$10,935.00 and reimbursement for expenses in the amount of \$274.12 for services rendered from April 1, 2022 through June 30, 2022. Doc. #254. DIP reviewed the fee application and raises no objection. Decl. of Mark Alan Forrest, Doc. #258. This is Movant's fifth fee application in this case. The court has previously approved a total of \$37,969.32 in

interim fees and expenses, of which \$22,045.94 has been paid to Movant.
Doc. #254.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #33. 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, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing general case administration; (2) preparing status conference statement; (3) preparing and filing debtor's second modified plan of reorganization; (4) communicating with DIP regarding monthly reports and income tax returns; (5) preparing ex parte application for order continuing confirmation hearing; and (6) preparing and prosecuting fee application. Decl. of Leonard K. Welsh, Doc. #257; Ex. B, Doc. #256. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$10,935.00 and reimbursement of expenses in the amount of \$274.12. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

5. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[DJP-1](#)

CONTINUED PRELIMINARY HEARING MOTION FOR RELIEF FROM AUTOMATIC STAY
8-2-2022 [[246](#)]

MEGAN KILGORE/MV
LEONARD WELSH/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.
RESPONSIVE PLEADING

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

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

NO ORDER REQUIRED.

On September 6, 2022, the court issued an order continuing the confirmation hearing to September 28, 2022 at 9:30 a.m. Doc. #302.

1. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[19-1081](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-28-2019 [[1](#)]

DILDAY ET AL V. JONES
RILEY WALTER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [18-14445](#)-A-7 **IN RE: KONARK RANCHES, LLC**
[20-1061](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT
10-30-2020 [[1](#)]

PARKER V. STAR NUT, CO. ET AL
LISA HOLDER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

On June 2, 2022, counsel for the plaintiff filed a Notice of Dismissal under Federal Rule of Civil Procedure 41(a)(1)(A) ("Rule 41"), as made applicable by Federal Rule of Bankruptcy Procedure 7041, seeking full dismissal of this adversary proceeding without court order. Doc. #69.

Rule 41 provides that a plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves an answer of a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

Fed. R. Civ. P. 41(a)(1)(A).

Instead of submitting stipulations of dismissal signed by each of the defendants that answered the complaint, namely: (i) Star Nut Co., a California corporation; (ii) Rohith Yalavarthi; (iii) Rajkishan Arikapudi; and (iv) Praveen Ravela, the plaintiff attached copies of settlement agreements signed by each of those parties. The settlement agreements do not comply with the requirements of Rule 41(a)(1)(A), and this adversary proceeding remains pending as to defendants (i) Star Nut Co., a California corporation, (ii) Rohith Yalavarthi, (iii) Rajkishan Arikapudi, and (iv) Praveen Ravela.

3. [19-13783](#)-A-7 **IN RE: MARK/SUSAN CHAGOYA**
[19-1129](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-6-2020 [[40](#)]

BROWN V. CHAGOYA ET AL
JEFF BEAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

4. [19-13783](#)-A-7 **IN RE: MARK/SUSAN CHAGOYA**
[19-1129](#) [PK-5](#)

CONTINUED MOTION BY PATRICK KAVANAGH TO WITHDRAW AS ATTORNEY
7-7-2022 [[109](#)]

BROWN V. CHAGOYA ET AL

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if record sufficiently supplemented.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed 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 the defendants 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 defendants are entered. Because the court requires additional information before granting the motion, the matter will proceed as scheduled.

Patrick Kavanagh ("Movant"), counsel for Mark A. Chagoya and Susan M. Chagoya ("Defendants"), the defendants in this adversary proceeding, moves to withdraw as Defendants' attorney of record in this adversary proceeding. Doc. #109. Movant's withdrawal will leave Defendants 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." LBR 2017-1(e). 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).

Movant has not conformed with LBR 2017-1(e) in that Movant's declaration does not state the efforts Movant made to notify Defendants of Movant's intentions to withdraw as their attorney. Kavanagh Decl., Doc. #111. The court will permit Movant to supplement to record at the hearing with respect to such efforts before determining whether such efforts are sufficient to grant the motion. The certificate of service filed with this motion shows that Defendants received

notice via electronic mail and U.S. mail. Doc. #112. Service was also made upon the plaintiff. Doc. #112.

Withdrawal is governed by the California Rules of Professional Conduct. LBR 2017-1(e). Pursuant to California Rules of Professional Conduct Rule 1.16, formerly Rule 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. Rules Prof. Conduct 1.16(b), <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules>.

Movant submits that no settlement agreement has been reached between Defendants and the plaintiff in this adversary proceeding and negotiations are stalled. Doc. #111. Movant also states that one of the defendants is more interested in going to trial than the other and, since there is an absence of unity between Defendants, Movant cannot try the case. Id. It appears that Movant has demonstrated cause for withdrawal.

Accordingly, subject to Movant sufficiently supplementing the record at the hearing, this motion will be GRANTED. The proposed order shall include the current addresses of Defendants.

5. [19-13783](#)-A-7 **IN RE: MARK/SUSAN CHAGOYA**
[PK-5](#)

CONTINUED MOTION BY PATRICK KAVANAGH TO WITHDRAW AS ATTORNEY
7-7-2022 [\[40\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

- TENTATIVE RULING: This matter will proceed as scheduled.
- DISPOSITION: Granted if record sufficiently supplemented.
- ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed 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 the defendants 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 defendants are entered. Because the court requires additional information before granting the motion, the matter will proceed as scheduled.

Patrick Kavanagh ("Movant"), counsel for Mark A. Chagoya and Susan M. Chagoya (collectively, "Debtors"), the debtors in this chapter 7 case, moves to withdraw as Debtors' attorney of record in Debtors' chapter 7 bankruptcy case. Doc. #40. Movant's withdrawal will leave Debtors 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.” LBR 2017-1(e). 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).

Movant has not conformed with LBR 2017-1(e) in that Movant’s declaration does not state the efforts Movant made to notify Debtors of Movant’s intentions to withdraw as their attorney. Kavanagh Decl., Doc. #42. The court will permit Movant to supplement to record at the hearing with respect to such efforts before determining whether such efforts are sufficient to grant the motion. The certificate of service filed with this motion shows that Debtors received notice via electronic mail and U.S. mail. Doc. #43. Service was also made upon the chapter 7 trustee and the United States trustee. Doc. #43.

Withdrawal is governed by the California Rules of Professional Conduct. LBR 2017-1(e). Pursuant to California Rules of Professional Conduct Rule 1.16, formerly Rule 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. Rules Prof. Conduct 1.16(b), <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules>.

Movant submits that no settlement agreement has been reached between Debtors and the plaintiff in an adversary proceeding filed in this court and negotiations are stalled. Doc. #42. Movant also states that one of the debtors is more interested in going to trial than the other and since there is an absence of unity between Debtors, Movant cannot try the case. Id. It appears that Movant has demonstrated cause for withdrawal.

Accordingly, subject to Movant sufficiently supplementing the record at the hearing, this motion will be GRANTED. The proposed order shall include the current addresses of Debtors.