



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Thursday, October 6, 2022
Department A – 510 19th Street
Bakersfield, California**

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 as instructed below.

Unless otherwise ordered, all hearings set on this calendar before Judge Niemann are simultaneously: (1) via **ZOOM.GOV VIDEO**, (2) via **ZOOM.GOV TELEPHONE**, and (3) 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.

9:00 AM

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

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-8-2022 [[69](#)]

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

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 October 2, 2022, amending their claimed exemptions. Doc. #79.

2. [21-12224](#)-A-13 **IN RE: LACEY FREEMAN**
[RSW-1](#)

MOTION TO MODIFY PLAN
8-15-2022 [[29](#)]

LACEY FREEMAN/MV
ROBERT WILLIAMS/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 movant has 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.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
8-9-2022 [\[28\]](#)

WILMINGTON SAVINGS FUND SOCIETY, FSB/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
KRISTIN ZILBERSTEIN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Debtor Arturo Ramirez ("Debtor") filed written opposition on September 2, 2022. Doc. #45. Debtor's opposition was filed one day late. 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 non-responding parties in interest are entered.

Secured creditor Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as owner trustee for CSMC 2018-RPL6 Trust, its successors and/or assignees ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 21301 Yearling Place, Tehachapi, CA 93561 (the "Property"). Doc. #28.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

Movant asserts cause to lift the automatic stay exists because Debtor is five post-petition payments delinquent to Movant in the aggregate amount of \$6,899.58, with the last payment made on February 18, 2022. Decl. of Stephanie Scarla, Doc. #59. In his late-filed response, Debtor asserts, without a supporting declaration, that Debtor has \$6,000 to pay towards the missing payments and will work with Movant to make that payment. Doc. #45. However, \$6,000 is not sufficient to bring the amount owed to Movant current.

Unless Debtor can show at the hearing that Debtor is current in his mortgage payments owed to Movant, the court will find that "cause" exists to lift the stay because Movant has produced evidence that Debtor is delinquent in post-petition mortgage payments. Scarla Decl., Doc. #59.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor has failed to make post-petition payments to Movant.

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

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

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

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). Debtor Arturo Ramirez ("Debtor") timely filed written opposition on August 25, 2022. Doc. #41. This matter will proceed as scheduled.

The chapter 13 trustee ("Trustee") asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). Debtor's bankruptcy case was filed on January 8, 2022, and no order confirming a plan has been entered.

Debtor opposes Trustee's motion to dismiss stating that a motion to confirm a modified plan was filed and set for hearing on September 8, 2022. As set forth in calendar matter #5 below, the court intends to deny Debtor's motion to confirm a modified plan because, among other things, Debtor is delinquent in his post-petition mortgage payments.

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 Debtor that is prejudicial to creditors because Debtor filed bankruptcy on January 8, 2022 and has not yet confirmed a plan. In addition, Debtor is delinquent on his post-petition mortgage payments, and so his proposed modified plan will not be confirmed.

A review of Debtor's Schedules A/B, C and D shows that Debtor has approximately \$72,000 in non-exempt equity in his homestead as well as approximately \$2,000 in non-exempt equity in two vehicles and a trash trailer. A review of the claims filed in Debtor's bankruptcy case shows priority unsecured claims in the

aggregate amount of \$3,310.50 (Claims 2 and 3) and general unsecured claims in the aggregate amount of \$875.54 (Claims 2, 3 and 5). Based on the amount of non-exempt equity in 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.

5. [22-10026](#)-A-13 **IN RE: ARTURO RAMIREZ**
[RSW-1](#)

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

ARTURO RAMIREZ/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 12, 2022, the chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the first modified plan. Doc. #38. 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 nonresponding parties in interest are entered. This matter will proceed as scheduled.

Arturo Ramirez ("Debtor") filed the first modified chapter 13 plan ("Plan") on August 4, 2022. Doc.# 24. Trustee objects to confirmation of the Plan because (1) 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), and (2) the Plan does not provide for equal monthly payments to allowed secured claims. Doc. #38.

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 party moving to confirm the chapter 13 plan bears the burden of proof to show facts supporting the proposed plan. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997).

The Plan lists secured creditor Shellpoint Mortgage Servicing ("Shellpoint") in Class 4 and provides that Shellpoint will be paid directly by Debtor. However, based on the motion for relief from stay filed by Shellpoint, Debtor has not made any post-petition mortgage payments to Shellpoint. See calendar matter #3. Based on the evidence before the court, Debtor has not met his burden to show that Debtor will be able to make all payments under the Plan.

In addition, the Plan provides for no monthly payments to Specialized Loan Servicing in Class 2 and contains a nonstandard provision stating that the plan will be paid from a sale of Debtor's residence in June 2023. Plan, Sections 3.08 and 7.01, Doc. #24. Debtor provides no evidence demonstrating an ability or plan to market and sell his residence to satisfy payments due under the Plan. See In re Hogue, 78 B.R. 867, 872-73 (Bankr. S.D. Ohio 1987) ("Bankruptcy courts have consistently denied confirmation of Chapter 13 plans containing such speculative contingencies.").

Accordingly, the motion will be DENIED.

6. [21-10928](#)-A-13 **IN RE: ALICE CAMERON**
[JCW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-8-2022 [\[79\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

7. [21-10928](#)-A-13 **IN RE: ALICE CAMERON**
[MHM-2](#)

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

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

NO RULING.

8. [22-11349](#)-A-13 **IN RE: IAN FRITZ**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-31-2022 [\[13\]](#)

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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 debtor timely filed written opposition on September 22, 2022. Doc. #27. The matter will proceed as scheduled.

Michael H. Meyer ("Trustee"), the Chapter 13 trustee in the bankruptcy case of Ian Charles Fritz ("Debtor"), objects to Debtor's claimed exemption under California Code of Civil Procedure ("C.C.P.") § 704.225 in the amount of \$17,000 in a checking and savings account with Chase Bank (the "Property"). Tr.'s Obj., Doc. #13; see Schedule C, Doc. #1.

Debtor filed his Chapter 13 case on August 8, 2022. C.C.P. § 704.225 provides in relevant part that "[m]oney in a judgment debtor's deposit account . . . is exempt to the extent necessary for the support of the judgment debtor[.]" C.C.P. § 704.225. Trustee objects to the claimed exemption in the Property because Debtor has not proved, by a preponderance of the evidence, that the entire \$17,000 is necessary for the support of Debtor. Doc. #13.

"[T]he debtor, as the exemption claimant, bears the burden of proof which requires [him] to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure § [704.225] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016) (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation.").

In opposition to Trustee's objection, Debtor declares that he is 100% disabled and has a live-in caretaker to assist him with basic tasks, including showering. Decl. of Debtor, Doc. #33. Debtor was denied retirement income from his military service because Debtor was injured six months and nine days short of the required service time to receive retirement income and only receives \$3,653.89 per month in VA disability income. Id. Due to his permanent disability, Debtor will not be able to work or earn retirement/pension income in the future. Id. The Property is Debtor's only savings/retirement, and Debtor needs those funds in case of an emergency or out-of-pocket medical bills. Id.

Based on the declaration of Debtor filed in opposition to Trustee's objection to exemption, the court finds that Debtor has shown that the Property is necessary for his support and has met his burden of proof to establish his claimed exemption in the Property pursuant to C.C.P. § 704.225.

Accordingly, this objection to Debtor's claim of exemption is OVERRULED.

9. [19-10854](#)-A-13 **IN RE: VIOLA REYNOLDS**
[RSW-2](#)

MOTION TO MODIFY PLAN
8-18-2022 [\[33\]](#)

VIOLA REYNOLDS/MV
ROBERT WILLIAMS/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 movant has 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.

10. [22-10471](#)-A-13 **IN RE: THERESA GUERRERO**
[MHM-1](#)

OBJECTION TO CLAIM OF NAVY FEDERAL CREDIT UNION, CLAIM NUMBER 1
8-18-2022 [\[19\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice pursuant to Local Rule of Practice ("LBR") 3007-1(b)(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 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). 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.

Michael H. Meyer ("Trustee"), the Chapter 13 trustee in this bankruptcy case, objects to claim no. 1 ("Claim 1") filed by Navy Federal Credit Union ("Claimant") on the grounds that Claim 1 is unenforceable under California state law and should be entirely disallowed pursuant to 11 U.S.C. § 502(b)(1). Tr.'s Obj., Doc. #19.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. The party objecting to a presumptively valid claim has the burden of presenting evidence to overcome the prima facie showing made by the proof of claim. In re Medina, 205 B.R. 216, 222 (B.A.P. 9th Cir. 1996). The objecting party must provide "sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.'" Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (quoting In re Holm, 931 F.2d 620, 623 (9th Cir. 1991)). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." Id. (quoting Ashford v. Consol. Pioneer. Mortg. (In re Consol. Pioneer Mortg.), 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995)).

Claim 1 asserts an unsecured claim of \$388.11 stemming from a credit account owned by Navy Federal Credit Union. Claim 1. According to the Statement of Account attached to Claim 1, the last transaction date on the account occurred on May 10, 2008. Claim 1. Claim 1 also lists the last payment date on the account as November 08, 2012, and the account charge off date as October 29, 2012. Claim 1.

Trustee contends that the relevant statute of limitations in California (Civ. Proc. Code § 337) bars Claimant's action to recover on a contract, obligation,

or liability founded on an instrument in writing after four years. Tr.'s Mot., Doc. #19. Trustee also notes that an action based on an oral contract is barred after two years under Cal. Civ. Proc. Code § 339. Doc. #19. Therefore, Trustee argues, Claim 1 must be disallowed entirely under § 502(b)(1).

A claim cannot be allowed under § 502(b)(1) if it is unenforceable under nonbankruptcy law. Durkin v. Benedor Corp. (In re G.I. Indus.), 204 F.3d 1276, 1281 (9th Cir. 2000). Having reviewed Claim 1 and Trustee's objection, the court finds that Trustee rebutted the prima facie showing made by Claim 1. Claimant has not responded.

Accordingly, Trustee's objection is SUSTAINED.

11. [19-13473](#)-A-13 **IN RE: CHRISTOPHER LOCASCIO**
[RSW-5](#)

MOTION TO REFINANCE
9-22-2022 [[112](#)]

CHRISTOPHER LOCASCIO/MV
ROBERT WILLIAMS/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 the hearing.

This motion was filed and served on at least 14 days' notice 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 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.

Christopher Locascio ("Debtor"), the chapter 13 debtor in this case, moves the court for an order authorizing Debtor to refinance his mortgage for the real property commonly known as 23800 Coyote Court, Tehachapi, CA (the "Property"). Doc. #112. Debtor wishes to refinance his mortgage because the refinancing will allow Debtor to pay off the balance of his chapter 13 bankruptcy. Decl. of Christopher Locascio, Doc. #114.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . 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."

The court is inclined to GRANT this motion. This motion was properly served and noticed, and opposition may be presented at the hearing. There is no indication that Debtor is not current on his chapter 13 plan payments or that the chapter 13 plan is in default. The new debt is a single loan incurred only to

refinance the existing debt encumbering the Property. Locascio Decl., Doc. #114. The only security for the new debt will be the Property.

Accordingly, subject to opposition raised at the hearing, this motion is GRANTED. Debtor is authorized, but not required, to enter into a refinance agreement in a manner consistent with the motion.

12. [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

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on September 29, 2022. Doc. #95.

13. [22-11281](#)-A-13 **IN RE: DWAYNE HAUGHTON**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC
9-19-2022 [\[28\]](#)

LAKEVIEW LOAN SERVICING, LLC/MV
DARLENE VIGIL/ATTY. FOR MV.

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 Moving Party will submit a proposed 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.

The debtor filed his modified chapter 13 plan ("Plan") on August 16, 2022. Doc. #21. Lakeview Loan Servicing, LLC ("Creditor") objects to confirmation of the Plan on the grounds that: (1) the Plan does not provide for the curing of the \$88,659.52 default on Creditor's claim; (2) the Plan does not provide for

post-petition mortgage payments to be paid to Creditor in the amount of \$2,296.22 as of August 1, 2022; (3) \$2,000 of Debtor's monthly income is speculative and \$3,138.66 in net monthly income is overstated; and (4) the monthly Plan payments will be insufficient to fund the Plan once the arrears on Creditor's claim and post-petition mortgage payments are provided for fully. Doc. #28.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under 11 U.S.C. § 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on September 28, 2022. Claim 3.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #21. The Plan fails to account for Creditor's claim. Claim 3; Doc. #21.

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

14. [21-11788](#)-A-13 **IN RE: JAVIER/DANIELLE DE OCHOA**
[RSW-2](#)

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

DANIELLE DE OCHOA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on September 16, 2022. Doc. #83.

15. [19-12898](#)-A-13 **IN RE: JEFFREY VANDERNOOR**
[MHM-3](#)

CONTINUED 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 November 3, 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 continued hearing on the debtor's motion to confirm third modified plan filed on August 31, 2022 (Doc. #131). On September 19, 2022, the trustee filed an objection to the debtor's motion to modify (Doc. #142) to which the debtor has not responded. Pursuant to calendar matter #16 below, the court continues the hearing on this motion to be heard with the debtor's motion to confirm third modified plan to November 3, 2022 at 9:00 a.m.

16. [19-12898](#)-A-13 **IN RE: JEFFREY VANDERNOOR**
 [RSW-5](#)

MOTION TO MODIFY PLAN
8-31-2022 [[131](#)]

JEFFREY VANDERNOOR/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 3, 2022 at 9:00 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)(2). The Chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the Chapter 13 plan. Tr.'s Opp'n, Doc. #142. 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 October 20, 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 debtor's position. Trustee shall file and serve a reply, if any, by October 27, 2022.

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 October 27, 2022. 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.

1. [22-11309](#)-A-7 **IN RE: SEAN/KERRY FRITZ**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-12-2022 [\[13\]](#)

TD BANK, N.A./MV
NEIL SCHWARTZ/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

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 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 Sys., 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.

The movant, TD Bank, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2018 Hyundai Elantra ("Vehicle"). Doc. #13.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$999.12, which includes late fees of \$62.46. Doc. #17.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

2. [22-11526](#)-A-7 **IN RE: LEANN JONES**
[WLG-1](#)

MOTION TO DISMISS DUPLICATE CASE
9-22-2022 [\[12\]](#)

LEANN JONES/MV
MICHAEL REID/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 court will issue an order after the hearing.

This motion was filed and served on at least 14 days' notice 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 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.

LeAnn Rachelle Jones ("Debtor") moves to dismiss this duplicative chapter 7 case on the grounds that Debtor's counsel inadvertently filed two duplicative chapter 7 bankruptcy petitions commencing Case No. 22-11525 and this instant case, Case No. 22-11526. Doc. #12.

A debtor does not have an absolute right to dismiss a voluntary Chapter 7 case. Bartee v. Ainsworth (In re Bartee), 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004). Section 707 of the Bankruptcy Code governs dismissal of a chapter 7 case, whereby the court "may dismiss a case under this chapter only after notice and a hearing and only for cause." 11 U.S.C. § 707(a); In re Kaur, 510 B.R. 281, 285 (Bankr. E.D. Cal. 2014). Regarding cause, a voluntary Chapter 7 debtor is entitled to dismissal so long as such dismissal will cause no legal prejudice to interested parties. Kaur, 510 B.R. at 286 (citations omitted).

The court finds that dismissing Debtor's voluntary Chapter 7 Case No. 22-11526 will cause no legal prejudice to interested parties because Debtor is active in her voluntary Chapter 7 Case No. 22-11525. A review of the docket in that case shows that case was filed on August 31, 2022, and Debtor appeared at the 341 meeting of creditors in that case. Case No. 22-11525, Doc. ##1-15. The court finds cause exists to dismiss Debtor's voluntary chapter 7 Case No. 22-11526.

Accordingly, pending any opposition at hearing, this motion will be GRANTED, and the case will be dismissed.

3. [21-10530](#)-A-7 **IN RE: CHRISTOPHER METAS**
[EJT-1](#)

CONTINUED OBJECTION TO CLAIM OF MELAINE METAS, CLAIM NUMBER 8
11-24-2021 [\[47\]](#)

LAW OFFICE OF EDWARD J. THOMAS/MV
LEONARD WELSH/ATTY. FOR DBT.
EDWARD THOMAS/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This objection to claim is DENIED AS MOOT. Melaine Metas withdrew Claim No. 8 on September 29, 2022. Doc. #93.

4. [20-11367](#)-A-7 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
[JMV-2](#)

MOTION TO PAY
9-6-2022 [\[441\]](#)

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

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 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 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.

As a procedural matter, the Clerk's Matrix of Creditors used by the moving party to serve notice of the motion does not comply with LBR 7005-1(d), which requires that the Clerk's Matrix of Creditors used to serve a notice be downloaded not more than 7 days prior to the date notice is served. Here, the

moving party served notice of the motion on September 6, 2022 using a Clerk's Matrix of Creditors that was generated on August 25, 2022. Doc. #444. The court encourages the moving party 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. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Temblor Petroleum Company LLC, moves the court for an order authorizing the payment of \$2,918.96 to Trustee Insurance Agency as an administrative expense. Doc. #441.

11 U.S.C. § 503(b)(1)(A)(i) of the Bankruptcy Code states that, after notice and a hearing, administrative expenses shall be allowed for "the actual, necessary costs and expenses of preserving the estate including [] wages, salaries, and commissions for services rendered after the commencement of the case[.]" To be deemed an administrative expense, the claim must have arisen from a transaction with the debtor in possession (or other person qualified as a trustee under 11 U.S.C. § 322) and directly and substantially benefitted the estate. Boeing N. Am., Inc. v. Ybarra (In re Ybarra), 424 F.3d 1018, 1025 (9th Cir. 2005) (citing Abercrombie v. Hayden Corp. (In re Abercrombie), 139 F.3d 755, 756 (9th Cir. 1998)).

Here, Trustee took out an umbrella insurance policy post-petition to cover the estate in the event of theft or personal injury with respect to an asset. Tr. Decl., Doc. #443. The asset has been sold and the premium of \$2,918.96 to Trustee Insurance Agency for insurance coverage from August 11, 2021 to August 11, 2022 is now due. The court finds that amount due to Trustee Insurance Agency arose from a transaction with Trustee and directly and substantially benefitted the estate.

Accordingly, this motion is GRANTED.

5. [22-11382](#)-A-7 **IN RE: MELISSA ARDON**
[NES-1](#)

MOTION TO DISMISS CASE
9-6-2022 [\[11\]](#)

MELISSA ARDON/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. 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. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Neil E. Schwartz, counsel for the chapter 7 debtor Melissa Ardon ("Debtor"), moves to dismiss this chapter 7 case on the grounds that Debtor was granted a discharge in a case commenced within eight years before the date of the filing of the petition. Doc. #11. Debtor is not eligible for discharge under 11 U.S.C. § 727(a)(8). Doc. #11.

A debtor does not have an absolute right to dismiss a voluntary chapter 7 case. Bartee v. Ainsworth (In re Bartee), 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004). Section 707 of the Bankruptcy Code governs dismissal of a chapter 7 case, whereby the court "may dismiss a case under this chapter only after notice and a hearing and only for cause." 11 U.S.C. § 707(a); In re Kaur, 510 B.R. 281, 285 (Bankr. E.D. Cal. 2014). Regarding cause, a voluntary chapter 7 debtor is entitled to dismissal so long as such dismissal will cause no legal prejudice to interested parties. Kaur, 510 B.R. at 286 (citations omitted).

The court finds that dismissing Debtor's voluntary chapter 7 case will cause no legal prejudice to interested parties because Debtor would not be eligible for discharge under chapter 7. Debtor's case was filed on August 12, 2022. Debtor previously filed a bankruptcy petition under chapter 7 on August 29, 2014, and Debtor's chapter 7 discharge was granted December 29, 2014. Doc. #1; Case No. 14-14353, Doc. ##1, 17. The court finds that cause exists to dismiss this case and dismissal will cause no legal prejudice to interested parties.

Accordingly, this motion is GRANTED.

10:30 AM

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

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
1-2-2020 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Continued to October 26, 2022, at 9:30 a.m.

ORDER: The court will issue an order.

The status conference will be continued to October 26, 2022, at 9:30 a.m., to
be heard with the hearing to approve the debtors' disclosure statement.

2. [22-10778](#)-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
[NCK-8](#)

CONTINUED AMENDED MOTION TO INCUR DEBT
8-3-2022 [[115](#)]

COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC/MV
NOEL KNIGHT/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

1. [18-14445](#)-A-7 **IN RE: KONARK RANCHES, LLC**
[20-1061](#)

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

PARKER V. GHANAKOTA
LISA HOLDER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding has been dismissed as to all parties. Doc.##60, 75, 77, 81.

2. [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.

3. [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 (collectively, "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. This matter was continued twice by Movant in hopes to reach a settlement agreement between Defendants before Movant withdraws as attorney from this case. Doc. #131, 140. However, Movant has filed a status report stating that settlement negotiations continue and, in the absence of a signed settlement agreement, Movant intends to move forward with this motion to withdraw. Doc. #143. 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.

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

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. This matter was continued twice by Movant in hopes to reach a settlement agreement between Debtors in their adversary proceeding before Movant withdraws as attorney from this case. Doc. ##131, 140. 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.