

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday November 10, 2022
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

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.

9:30 AM

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

MOTION TO DISMISS CASE
10-12-2022 [\[83\]](#)

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

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

DISPOSITION: Continued to December 8, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to December 8, 2022 at 9:30 a.m., to be heard in conjunction with the debtors' motion to confirm plan.

2. [22-11124](#)-A-13 **IN RE: ROBERT ZAMORA AND NICOLE SELLERS**
[SL-1](#)

MOTION TO CONFIRM PLAN
9-23-2022 [\[24\]](#)

NICOLE SELLERS/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

3. [22-11124](#)-A-13 **IN RE: ROBERT ZAMORA AND NICOLE SELLERS**
[SL-2](#)

OBJECTION TO CLAIM OF KINGS COUNTY DEPARTMENT OF CHILD SUPPORT OFFICE,
CLAIM NUMBER 9
9-26-2022 [\[34\]](#)

NICOLE SELLERS/MV
SCOTT LYONS/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 October 13, 2022. Doc. #41.

4. [22-11542](#)-A-13 **IN RE: ANDREW ARAGON**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
10-17-2022 [\[31\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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.

Andrew Aragon ("Debtor") filed his chapter 13 plan ("Plan") on September 2, 2022. Doc. #3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan on the grounds that: (1) the Plan does not provide for the payment in full of all priority claims; (2) Debtor has not filed all required tax returns; (3) the Plan provides for payments to creditors for a period that is longer than 5 years; and (4) the Plan has not been proposed in good faith and/or the bankruptcy petition was filed in bad faith. Doc. #31.

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).

Section 1322(a)(2) of the Bankruptcy Code requires that the plan provide for the full payment, in deferred cash payments, of all claims entitled to priority under 11 U.S.C. § 507. 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 section 501, is deemed allowed unless a party in interest objects. The Internal Revenue Service (the "IRS") has filed a proof of claim with a priority amount of \$4,286.20. Claim 5-1.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #3. Section 3.12 of the Plan does not provide for any payments to priority claims and so fails to account for the IRS' priority claim. Claim 5-1; Doc. #3. Thus, the Plan does not comply with 11 U.S.C. § 1322(a)(2) and cannot be confirmed.

Section 1325(a)(9) of the Bankruptcy Code requires that Debtor has filed all applicable federal, state and local tax returns as required by 11 U.S.C. § 1308. Debtor has not filed his 2020 tax returns before the meeting of creditors was concluded. Claim 5-1; Mot., Doc. #31. Thus, the plan cannot be confirmed.

Section 1322(d) of the Bankruptcy Code requires that a plan cannot provide for payments to creditors for longer than 5 years. The plan currently provides for plan payments of \$1,891.00 but \$2,272.94 in monthly distributions to pay attorneys' fees, arrears to a secured creditor and ongoing mortgage payments. Thus, the plan does not fund in 5 years and cannot be confirmed.

Finally, 11 U.S.C. § 1325(a)(3) requires that a plan be proposed in good faith and not by any means forbidden by law. Section 1325(a)(7) requires that the action of the debtor in filing the petition be in good faith. 11 U.S.C. § 1325(a)(3), (a)(7). "Although not defined under the [Bankruptcy] Code, 'good faith' is generally interpreted to mean 'a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'" In re Mann Farms, Inc., 917 F.2d 1210, 1214 (9th Cir. 1990). A finding of good faith "requires the court to consider the totality of the circumstances." Id. "A good faith test . . . should examine the intentions of the debtor and the legal effect of the confirmation of a Chapter 13 plan in light of the spirit and purposes of Chapter 13." In re Chinichian, 784 F.2d 1440, 1444 (9th Cir. 1986).

Here, Trustee asserts that this bankruptcy case was filed in bad faith and the plan has not been proposed in good faith because Debtor has filed three previous chapter 13 cases and has not been successful in completing any of them. Moreover, Debtor was gifted with over \$85,000.00 from his mother sometime after July 2021 and, rather than making his plan payment in his prior chapter 13 case, he used the money to buy a new truck and make home improvements and catch up on bills. Tr's Decl., Doc. #33. Trustee has made a *prima facie* showing that this bankruptcy case was filed in bad faith and/or the plan has not been proposed in good faith.

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

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
10-18-2022 [\[110\]](#)

PATRICK KAVANAGH/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 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

Patrick Kavanagh ("Movant"), counsel for Eloy Rodriguez and Angela Rodriguez (collectively, "Debtors"), the debtors in this chapter 13 case, requests allowance of final compensation in the amount of \$7,000.00 and has waived reimbursement for expenses in the amount of \$129.96 for services rendered from September 12, 2017¹ through closing. Doc. #110. Debtors' confirmed plan provides for \$7,000.00 in attorney's fees to be paid prior to the filing of the case. Plan, Doc. ##16, 92. All fees and expenses in excess of \$7,000.00 for this case are waived, and all fees for the prior case are also waived. Ex. A, Doc. #110. Movant is seeking approval of payment of \$7,000.00 with payment of \$5,000.00 from Movant's trust account. Id. Debtors reviewed the final fee application and have no objection. Ex. E, Doc. #110.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, 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). Here, Movant demonstrates services rendered relating to: (1) reviewing and drafting response to motion to dismiss; (2) communicating with Debtors to review and finalize plan; (3) preparing for and attending 341 meeting; (4) drafting amendments to Schedules I and J; (5) drafting motion to value property and motion to sell; (6) preparing and filing fee application; and (7) providing general case administration. Exs. A, B & C, Doc. #110. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

¹ Movant's motion states that the time period for the current application is 9/12/2018 to closing. Doc. #110. However, based on a review of the time records supporting the motion, the court believes Movant intended the application period to be for services rendered from 9/12/2017 to closing.

This motion is GRANTED. The court allows on a final basis the compensation requested by this motion in the amount of \$7,000.00 to be paid in a manner consistent with the terms of the confirmed plan.

6. [22-10545](#)-A-13 **IN RE: AMY LOCKWOOD**
[MKM-2](#)

MOTION TO VALUE COLLATERAL OF AMERICAN CREDIT ACCEPTANCE
10-3-2022 [\[48\]](#)

AMY LOCKWOOD/MV
MICHAEL MOORE/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 the creditor, 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.

Amy Lockwood ("Debtor"), the debtor in this chapter 13 case, moves the court for an order valuing the Debtor's 2011 Dodge Charger ("Vehicle"), which is the collateral of American Credit Acceptance ("Creditor"). Doc. #48.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

The Vehicle was purchased more than 910 days before the filing of this case. Schedule D, Doc. #1. Debtor asserts a replacement value of the Vehicle of \$7,280.00 and asks the court for an order valuing the Vehicle at \$7,280.00. Decl. of Amy Lockwood, Doc. #50. Debtor is competent to testify as to the value of the Vehicle. American Credit Acceptance's claim is listed in the Debtor's Schedule D. Schedule D, Doc. #1. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$7,280.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

7. [22-11145](#)-A-13 **IN RE: GUSTAVO BARRON**
[PLG-1](#)

MOTION TO MODIFY PLAN
9-30-2022 [\[33\]](#)

GUSTAVO BARRON/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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.

OBJECTION TO CONFIRMATION OF PLAN BY SPECIALIZED LOAN SERVICING LLC
10-25-2022 [\[17\]](#)

SPECIALIZED LOAN SERVICING LLC/MV
SCOTT LYONS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/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 debtors filed their chapter 13 plan ("Plan") on September 8, 2022. Doc. #3. Specialized 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 \$10,940.71 default on Creditor's claim; and (2) the monthly Plan payments will be insufficient to fund the Plan once the arrears on Creditor's claim are fully provided for. Doc. #17.

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 section 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on October 29, 2022. Claim 14-1.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #3. The Plan fails to account for the full amount of the arrears asserted in Creditor's claim. Claim 14-1; Doc. #3.

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

MOTION TO DISMISS CASE
10-12-2022 [\[18\]](#)

MICHAEL MEYER/MV

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

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

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 the debtor 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 default of the debtor is 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)(4) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #18. Specifically, the trustee asks the court to dismiss this case for the debtor's failure to: (1) provide the trustee with requested documents; and (2) file complete and accurate Petition, Schedules, Chapter 13 Plan and Statement of Financial Affairs pursuant to 11 U.S.C § 521 and/or Federal Rule of Bankruptcy Procedure 1007. Doc. #18. The debtor did not oppose the motion.

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 the debtor failed to provide the trustee with requested documents and failed to file complete and accurate Petition, Schedules, Chapter 13 Plan and Statement of Financial Affairs.

A review of the debtor's Schedules A/B and D shows that the debtor's real and personal property is encumbered, and the debtor's real property is co-owned. The trustee's objection to the debtor's claimed homestead exemption has been sustained. Doc. #23. Should the debtor choose to amend Schedule C exemptions, it appears that there would remain non-exempt equity that may be available for the benefit of unsecured creditors. Because there appears to be non-exempt equity in the debtor's assets to be realized for the benefit of the estate,

conversion, rather than dismissal, is in the best interests of creditors and the estate.

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

10. [22-11583](#)-A-13 **IN RE: DANIEL/REBEKAH FIGUEROA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
10-25-2022 [[14](#)]

PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

11:00 AM

1. [22-11304](#)-A-7 **IN RE: ESTEHER GONZALEZ VASQUEZ**
[22-1021](#)

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-18-2022 [[11](#)]

LOPEZ V. GONZALEZ VASQUEZ

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings
and conclusions.

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the complaint will be stricken and the adversary proceeding dismissed on the grounds stated in the order to show cause.

2. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#) [CAE-1](#)

ORDER TO SHOW CAUSE
10-7-2022 [[351](#)]

NICOLE V. T2M INVESTMENTS, LLC

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the missing corporate disclosure statement was filed on October 19, 2022. Doc. #353. Therefore, this order to show cause will be VACATED.