

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

**November 22, 2022 at 1:30 p.m.**

---

1.     [21-23900](#)-C-13   MAURICE RHODENNASH                             MOTION TO RECONSIDER  
                                  Pro Se   10-14-22 [[112](#)]

CASE DISMISSED: 03/11/2022

**Final Ruling:** No appearance at the November 22, 2022 hearing is required.  
-----

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 36 days' notice was provided. Dkt. 116.

The court has reviewed the motion and all related documents. The court has also reviewed and takes judicial notice of the docket. Fed. R. Evid. 201(c)(1). The court has determined that oral argument is not necessary and will not assist in the decision-making process. Local Bankr. R. 1001-1(f), 9014-1(h). The motion will therefore be decided on the papers.

**The Motion to Vacate is Denied.**

Debtor, Maurice R. Nash, filed this Motion seeking to vacate this court's Orders (Dkts. 105 & 106) denying the reopening of debtor's Chapter 13 case and to pay fees in installments.

The court issued its Orders denying the reopening of the case and to pay fees in installments after the debtor filed the motion without paying the requisite fees and finding that the debtor failed to show why this court should vacate the prior orders.

**APPLICABLE LAW**

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1)     mistake, inadvertence, surprise, or excusable neglect;
- (2)     newly discovered evidence that, with reasonable

**November 22, 2022 at 1:30 p.m.**

diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); see also *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

Another consideration is the importance of finality of judgments. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

## DISCUSSION

The Court carefully considered the debtor's application to vacate dismissal and pay fees in installments. Nothing has transpired that would change the court's ruling. The debtor's case was dismissed on March 11,

2022 after the Chapter 13 Trustee brought a motion to dismiss for the following reasons:

- 1) Debtor was delinquent in plan payments and the trustee had not received a payment from the debtor since December 14, 2021;
- 2) The initial plan that was filed by debtor was essentially blank and was incomprehensible;
- 3) The initial plan filed by the debtor was not confirmed after the trustee's objection to confirmation was sustained;
- 4) Debtor had not paid the filing fees; and
- 5) Debtor had not filed a new proposed plan.

The court has also reviewed the plan (dkt. 91) that was filed on September 28, 2022, 6 months after the case was dismissed, and finds that it is more incomplete than the first plan, does not provide for a monthly payment amount to the trustee, and is unconfirmable even if the court were to consider it. The court further notes that the debtor is still behind on payment of the filing fees for the original petition even with the installment that was paid on October 28, 2022.

**An Order will be issued from Chambers.**

2. [21-20009](#)-C-13 CYNTHIA ARIETA  
[PGM](#)-6 Peter Macaluso

MOTION TO SELL AND/OR MOTION TO  
WAIVE RULE 6004 (H)  
11-8-22 [[127](#)]

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 21 days' notice. The Proof of Service shows that 14 days' notice was provided. Dkt. 131.

**The Motion to Sell is Granted.**

Debtor Cynthia Arieta, and Successor in interest Salena Arieta, filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell property commonly known as 663 Crosswind Dr., Sacramento, CA ("Property").

The proposed purchasers of the Property are Octavio and Asuncion Gutierrez, and the proposed purchase price is \$365,000.00.

**DISCUSSION**

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: ~~xxxxxxxxxxxxxxxxxx~~.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because debtor will be able to pay creditors at 100% with the proceeds.

**Broker's Commission**

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately \$21,900. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than six percent commission.

**Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Motion to Sell Property filed by Cynthia Arieta, and Successor in interest Salena Arieta ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted. The debtor's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 trustee for approval as to form, and if so approved submit the proposed order to the court.

**IT IS FURTHER ORDERED** that Movant is authorized to pay a real estate broker's commission in an amount not more than six percent of the actual purchase price upon consummation of the sale.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

3. [20-23327](#)-C-13 DOUGLAS BRAUNER  
[KSR](#)-1 Mark Wolff

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
10-25-22 [[49](#)]

ORO FINANCIAL OF CA INC. VS.

Thru #4

#### **Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 60.

**The Motion for Relief from the Automatic Stay is Denied.**

Oro Financial of CA Inc. ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's commercial property located 2301 El Camino Avenue, Sacramento, CA (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because Movant alleges the debtor is delinquent paying the county property taxes pursuant to debtor's plan and the county may sell the property. However, movant does not provide any evidence, including a declaration, of the failure to pay the property taxes, other than an exhibit of a screenshot of Sacramento County's online tax bill system that is unclear what is shown.

#### **DEBTOR'S OPPOSITION**

Debtor filed a response to creditor's opposition to debtor's motion to modify plan (DCN WW-4) on November 15, 2022, which responded to this motion. Dkt. 61. Debtor asserts that there is equity in the property that adequately protects the interests of movant. Debtor represents that even using the movant's value of \$500,000 there is approximately \$117,000 net equity in the property.

#### **DISCUSSION**

Upon review of the record, the court finds cause for relief from stay does not exist pursuant to 11 U.S.C. § 362(d)(1) because the total debt secured by the Property does not exceed the value of the Property and there is adequate equity to protect the creditor. Further, the movant has not provided any evidence that supports its assertion that the debtor is delinquent in its property taxes. However, the court notes the Sacramento County proof of claim (Claim # 12-1) that shows the amount delinquent in post-petition property taxes. The court also notes the debtor's declaration and evidence from the Sacramento County Tax Collector stating that a sale of the property will not occur while the Bankruptcy Case is open.

Based on the foregoing, the Motion is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Oro Financial of CA Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the motion is denied.

**No Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 42 days' notice was provided. Dkt. 48.

**The Motion to Modify Plan is xxxxxxxx**

The debtor filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 46) filed on October 11, 2022.

**CREDITOR OBJECTION**

Oro Financial of CA Inc. filed an Opposition (Dkt. 57) on November 7, 2022, opposing confirmation on the following grounds:

1. The plan significantly understates the Sacramento County property tax due on the debtor's commercial property;
2. The plan's proposed 5% interest rate is not consistent with the 11.99% rate on the note held by creditor; and
3. The plan does not provide a time limit to sell the property and the note to be paid off.

**DEBTOR'S RESPONSE**

Debtor filed a response (Dkt. 61) on November 15, 2022, responding to Creditor with the following:

1. Creditor is adequately protected by the equity in the property;
2. Debtor has obtained a new real estate agent and is actively marketing the property and is in negotiations with a potential purchaser;
3. Sacramento County has filed a proof of claim (Claim # 12-1) with the amount due for unpaid property taxes

**DISCUSSION**

At the hearing xxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.



The Motion to Modify Plan filed by the debtor, Douglas Brauner, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is ~~xxxxxxxxxx~~

5. [22-21135](#)-C-13 ROBERT KOEHLER  
[DNL](#)-3 Eric Schwab

CONTINUED MOTION TO CONVERT  
CASE FROM CHAPTER 13 TO CHAPTER  
7  
7-28-22 [[34](#)]

**No Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 38.

**The Motion to Convert Case to Chapter 7 is ~~xxxxxx~~**

This Motion to Convert the Chapter 13 bankruptcy case of Robert Francis Koehler ("Debtor") has been filed by Drew and Elizabeth Prinz ("Movant"), a creditor. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. Debtor filed the current bankruptcy case in an inequitable manner and unfairly manipulated the Bankruptcy Code because he dismissed his first bankruptcy case after substantial time and expense was devoted to an Adversary Proceeding and contested matters to decide an exception to discharge, conversion of case to Chapter 7 and objections to claims of exemption.
- B. The debtor filed in bad faith because his second case was filed 23 days after the first bankruptcy case was voluntarily dismissed.
- C. The debtor's intent was to only defeat the state court litigation because both the first and second bankruptcy cases were filed within hours of adverse rulings by the state court.
- D. The debtor's behavior is egregious because he is using the bankruptcy system to avoid paying a judgment to an elderly client.

Movant also contends that conversion, rather than dismissal, is in the best interest of creditors because dismissal will require the movant to seek satisfaction of their claims through alternative means, whereas Chapter 7 will provide payment to the Movant as quickly as reasonably possible. Movant further argue that liquidation is the better alternative because the Debtor has a significant amount of non-exempt assets available to pay movant.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on August 11, 2022. Dkt. 41. Debtor states that movants and debtor agreed to stay the associated adversary

proceeding until the cross appeals in state court have been resolved and there is no prejudice to creditors - who are the only creditors in the case - because there is sufficient equity beyond the debtor's claimed homestead exemption to pay creditors' judgement in full with interest and attorney fees. The debtor further contends that conversion could cause irreparable harm to debtor if liquidation occurs before the appeals are resolved in state court.

## **PRIOR HEARING**

At the prior hearing on November 8, 2022, the motion was continued to allow the debtor time to file a plan that is feasible and would satisfy all of the Court's concerns whether cause exists to either convert to Chapter 7 or dismiss the case.

## **APPLICABLE LAW**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" Nelson v. Meyer (In re Nelson), 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing Ho v. Dowell (In re Ho), 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

11 U.S.C. § 1307(c). The court engages in a "totality of circumstances" test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. Drummond v. Welsh (In re Welsh), 711 F.3d 1120, 1123 (9th Cir. 2013) (citing Leavitt v. Soto (In re Leavitt), 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. Nady v. DeFrantz (In re DeFrantz), 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing In re Leavitt, 171 F.3d at 1224).

## **DISCUSSION**

At the hearing **xxxxxxx**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Convert the Chapter 13 case filed by Drew and Elizabeth Prinz ("creditor") having been presented to the court, and upon review of the pleadings, evidence,

arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert is ~~xxxxxxx~~

**Final Ruling:** No appearance at the November 22, 2022 hearing is required.  
-----

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 43 days' notice was provided. Dkt. 46.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

**The Motion to Modify Plan is granted.**

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify Plan filed by the debtor, Alester Coleman, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, the Modified Chapter 13 Plan (Dkt. 42) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Counsel for the debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

7. [22-21986](#)-C-13 TIFFANY CHARLES MOTION TO CONFIRM PLAN  
[HLG](#)-1 Kristy Hernandez 10-7-22 [[20](#)]

**Final Ruling:** No appearance at the November 22, 2022 hearing is required.  
-----

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 46 days' notice was provided. Dkt. 27.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

**The Motion to Confirm is granted.**

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 21) filed on October 7, 2022.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Tiffany Charles, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, the debtor's Chapter 13 Plan (Dkt. 21) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the November 22, 2022 hearing is required.  
-----

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 145.

<b>The Motion to Confirm is Denied.</b>
---

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 133 ) filed on September 21, 2022.

**CHAPTER 13 TRUSTEE OPPOSITION**

The Chapter 13 Trustee filed an Opposition (Dkt. 138) on October 18, 2022, and a supplemental Opposition (Dkt. 146) on October 24, 2022, opposing confirmation on the following grounds:

1. Debtor has failed to provide 2021 Federal and State income tax returns;
2. Debtor has failed to provide profit and loss statement for debtor's business;
3. Plan may not be feasible because it proposes Class 2(A) creditor a monthly dividend and then either sale or refinance an unnamed and unlisted property at the end of plan term; and
4. Plan improperly classified the secured claim of Jeannine C. Banayat under Class 3, which provides for the surrender of property but is an inconsistent treatment of the collateral under section 3.09.

**CREDITOR OPPOSITION**

Creditor, Jeanine Banayat, filed an opposition (Dkt. 149) on October 22, 2022, opposing confirmation on the following grounds:

1. Debtor has failed to provide evidence that the plan is feasible or any evidence regarding her household income for a determination of the liquidation analysis;
2. The plan inconsistently treats creditor's claim from other claims that are secured by the same collateral;
3. The plan limits creditor's ability to reach all of her collateral;

4. The plan fails the liquidation analysis because it does not include creditor's deficiency claim;

5. The debtor's monthly payment exceeds her disposable income by almost \$200; and

6. The plan was filed in bad faith.

#### **CREDITOR OPPOSITION**

Creditor, Boardwalk Island Trust, filed an opposition (Dkt. 151) on November 8, 2022, opposing confirmation on the following grounds:

1. The plan does not provide for the arrears owed to creditor to be paid within the plan terms, but adds them in with the loan balance and re-amortizes the total over 30 months; and

2. Creditor joins with the Chapter 13 Trustee's objections.

#### **DEBTOR'S RESPONSE**

Debtor filed a response (Dkt. 152) on November 15, 2022, representing that given the objections this plan is not confirmable and will be filing a third amended plan.

#### **DISCUSSION**

The debtor has not provided the trustee with all required tax returns. 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The debtor has not explained how she is going to sale or refinance property at the end of the plan's term and has supplied insufficient information relating to the real property to be sold or refinanced to assist the Chapter 13 Trustee in determining whether the plan is feasible.

The debtor improperly classifies creditors whose claim is secured by the same property.

The debtor has not filed all business documents including, profit and loss statements. 11 U.S.C. §§ 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1) & (a)(6).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Generosa Dizon, having been presented to the court, and upon review



of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied, and the plan is not confirmed.