

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: November 28, 2023

CALENDAR: 1:00 P.M. CHAPTER 13

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. 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 and no appearance is necessary. 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 seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

November 28, 2023 at 1:00 p.m.

1. [23-90326](#)-B-13 KRISTOPHER COOPER MOTION TO DISMISS CASE
[LGT](#)-1 Flor De Maria A. Tataje 11-14-23 [[78](#)]
And #5
Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion to dismiss case and continue the matter to December 5, 2023, at 1:00 p.m.**

First, Debtor is delinquent in plan payments in the amount of \$18,150.00. The plan calls for payments of \$6,050.00 for 60 months. As of the date of the hearing on this motion, another plan payment in the amount of \$6,050.00 will have come due on November 25, 2023. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c).

Second, Debtor has filed multiple plans and motions to confirm, none of which have been actually heard by the court. Debtor's failure to perform his duties is prejudicial to creditors who are delayed in receiving payments. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is conditionally granted and the case will be dismissed.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, December 1, 2023, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on December 5, 2023, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on December 5, 2023, at 1:00 p.m.

November 28, 2023 at 1:00 p.m.

2. [23-90428](#)-B-13 LEAH GOODMAN
Matthew J. DeCaminada

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-20-23 [[15](#)]

Final Ruling

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due October 16, 2023. The court's docket reflects that the default was cured on November 3, 2023. The payment constituted the final installment.

The order to show cause is ORDERED DISCHARGED for reasons stated in the minutes and the case SHALL REMAIN PENDING.

The court will issue an order.

3. [23-90437](#)-B-13 KEANNA ALMEDA
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-25-23 [[28](#)]

CASE DISMISSED: 11/3/23

Final Ruling

The case having been dismissed on November 3, 2023, the order to show cause is discharged as moot.

The order to show cause is ORDERED DISCHARGED AS MOOT for reasons stated in the minutes.

The court will issue an order.

4. [20-90020](#)-B-13 JOHN DIAZ
Bradley J. Swingle

CONTINUED MOTION TO WAIVE
SECTION 1328 CERTIFICATE
REQUIREMENT, SUBSTITUTE PARTY,
AS TO DEBTOR
11-6-23 [[53](#)]

Final Ruling

An Amended Notice of Hearing on Motion for Omnibus Relief was filed on November 20, 2023. This matter was continued from November 21, 2023, by the court to allow Debtor John Diaz's counsel to serve parties in interest. The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to conditionally substitute Debtor's daughter Laura Villa to continue administration of the case, and waive the deceased Debtor's certification otherwise required for entry of a discharge.

Ms. Villa gives notice of the death of her father John Diaz and requests the court to substitute Ms. Villa as her father's successor for all purposes within this Chapter 13 proceeding. Ms. Villa is separately the successor trustee pursuant to The Diaz Family 2022 Revocable Living Trust. The Debtor has paid \$27,320.00 to the Chapter 13 Trustee to date. It is Ms. Villa's understanding that there are remaining plan payments of \$11,700.00 and she proposes to complete the plan payments in a lump sum payment.

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

- 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025];
- 2) Continued administration of a case under chapter 11, 12, or 13 (Fed. R. Bankr. P. 1016);
- 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
- 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications (11 U.S.C. § 1328).

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." Local Bankr. R. 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Laura Villa for John Diaz as successor-in-interest, and to waive the § 1328 and financial management requirements for John Diaz. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

5. [23-90326](#)-B-13 KRISTOPHER COOPER CONTINUED MOTION BY FLOR DE
[FAT](#)-4 Flor De Maria A. Tataje MARIA A. TATAJE TO WITHDRAW AS
See Also #1 ATTORNEY
11-6-23 [[69](#)]

Final Ruling

This matter was continued from November 21, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, November 24, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 89, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on November 28, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.