



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, November 30, 2023
Department A – Courtroom #11
Fresno, California**

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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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.

1. [18-14606](#)-A-13 **IN RE: KENNETH/JANE HOSTETLER**
[MHM-2](#)

MOTION TO DISMISS CASE
11-2-2023 [\[51\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on at least 28 days' notice pursuant to 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 moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(6) because the debtors have failed to make all payments due under the plan. The plan term completes in November 2023, and the debtors need to pay \$20,028.39 to complete the case. Doc. #51. On February 1, 2023, the chapter 13 trustee sent a letter to the debtors' counsel explaining that the plan would not fund as proposed because a secured creditor filed a proof of claim claiming pre-petition arrears that were higher than the amount provided for by the debtors in the plan. Ex. A, Doc. #54. The debtors did not oppose this 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)(6) to dismiss this case because the debtors have failed to make all payments due under the plan.

A review of the debtors' Schedules A/B, C and D shows that the debtors' assets are fully exempt. Doc. #1. Because there is no equity to be realized for the

benefit of the estate, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

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

2. [23-12122](#)-A-13 **IN RE: KAYLA GARZA**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
11-1-2023 [[19](#)]

NICHOLAS WAJDA/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 debtor filed a modified plan on November 27, 2023 (Doc. #36), with a motion to confirm the modified plan set for hearing on January 11, 2024 at 9:30 a.m. Doc. ##32-38.

3. [23-12122](#)-A-13 **IN RE: KAYLA GARZA**
[MHM-3](#)

MOTION TO DISMISS CASE
11-2-2023 [[22](#)]

NICHOLAS WAJDA/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on November 29, 2023. Doc. #39.

4. [18-11032](#)-A-13 **IN RE: RICARDO CORONA**
[MHM-2](#)

MOTION TO DISMISS CASE
11-1-2023 [\[104\]](#)

THOMAS GILLIS/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 November 20, 2023. Doc. #108.

5. [23-11539](#)-A-13 **IN RE: MARSHA MENDOZA**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
9-8-2023 [\[26\]](#)

MICHAEL MEYER/MV

NO RULING.

6. [23-12046](#)-A-13 **IN RE: LINO LOPEZ AND MARIA GARCIA**
[MHM-1](#)

MOTION TO DISMISS CASE
10-23-2023 [\[12\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on at least 28 days' notice pursuant to 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 moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors. Doc. #12. Specifically, Trustee asks the court to dismiss this case for the debtors' failure to provide Trustee with copies of all required payment advices for Maria Guadalupe Garcia as well as the last tax return filed by Lino Guevara Lopez, Jr. Doc. #12. The debtors did not oppose this 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 the debtors that is prejudicial to creditors because the debtors have failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(1) and (e)(2).

A review of the debtors' Schedules A/B, C and D shows that the debtors' vehicles are over encumbered or fully exempt, and the debtors claim exemptions in their remaining assets. Doc. #1. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

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

7. [23-10947](#)-A-13 **IN RE: SONIA LOPEZ**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
8-29-2023 [\[38\]](#)

MICHAEL MEYER/MV
SUSAN SILVEIRA/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

8. [23-10947](#)-A-13 **IN RE: SONIA LOPEZ**
[SDS-3](#)

MOTION TO CONFIRM PLAN
10-23-2023 [\[71\]](#)

SONIA LOPEZ/MV
SUSAN SILVEIRA/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

9. [23-11859](#)-A-13 **IN RE: AUGUSTO TRIGUEROS**
[SAH-1](#)

MOTION TO CONFIRM PLAN
10-23-2023 [\[22\]](#)

AUGUSTO TRIGUEROS/MV
SUSAN HEMB/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 movant has done here.

As an informative matter, one of the certificates of service filed in connection with this motion to confirm (Doc. #27) was filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) instead of being printed prior to filing with the court. The version that was filed with the court can be altered because it is still the fillable version. In the future, the declarant should print the completed certificate of service form prior to filing and not file the fillable version. In addition, the declarant did not attach a copy of Attachment 6B2 to the certificate of service form, so the court cannot determine from the certificate of service filed whether creditors who have filed a Request for Special Notice were served with the motion and supporting declaration. However, because the court determines that proper notice was provided based on the other certificate of service filed with the motion, Doc. #26, the court will grant the motion.

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. [23-12081](#)-A-13 **IN RE: ROBERT/ANNA ODAY**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
11-1-2023 [\[17\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The trustee withdrew his objection to confirmation on November 29, 2023.
Doc. #33.

11. [23-12081](#)-A-13 **IN RE: ROBERT/ANNA ODAY**
[NMB-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BRUCE PERSSON
11-7-2023 [\[23\]](#)

BRUCE PERSSON/MV
STEPHEN LABIAK/ATTY. FOR DBT.
NANETTE BEAUMONT/ATTY. FOR MV.
RESPONSIVE PLEADING

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 to confirmation was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Although not required, the debtors filed a written response. Doc. #28. The court intends to sustain the objection because the debtors' filed Schedules I and J do not support the increased plan payments proposed in the response. At the hearing, the court will consider additional 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.

As a procedural matter, the certificate of service filed in connection with this objection to confirmation does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022. The court encourages counsel for the objecting creditor 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>.

The debtors filed their chapter 13 plan ("Plan") on September 19, 2023. Doc. #4. Bruce Persson ("Creditor") objects to confirmation of the Plan on the grounds that: (1) the Plan does not provide for the curing of the \$210,590.19 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 provided for fully. Doc. #23.

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 his proof of claim on October 23, 2023. Claim 3.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #4. The Plan fails to account for Creditor's claim. Claim 3; Doc. #4.

The debtors respond to Creditors' objection stating that the debtors are willing to stipulate to an increased monthly dividend to Creditor from \$3,300.00 per month to \$3,509.84 per month and increase the plan payment to \$4,626.18 per month to resolve this plan objection. Doc. #28. However, a review of the debtors' filed Schedules I and J show a net income of only \$4,400.00 per month. Doc. #1.

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).

Based on the currently filed Schedules I and J, the court finds that the debtors have not met their burden of proof to show that the debtors will be able to make the proposed increased plan payments.

Accordingly, pending the filing of amended Schedules I and J showing that the debtors can afford the proposed increased plan payments, the objection will be SUSTAINED.

1. [23-10947](#)-A-13 **IN RE: SONIA LOPEZ**
[23-1039](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
9-21-2023 [[1](#)]

LOPEZ V. UNIFIED MORTGAGE SERVICE, INC. ET AL
SUSAN SILVEIRA/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [23-10947](#)-A-13 **IN RE: SONIA LOPEZ**
[23-1039](#) [CAE-2](#)

ORDER TO SHOW CAUSE
10-31-2023 [[13](#)]

LOPEZ V. UNIFIED MORTGAGE SERVICE, INC. ET AL
RESPONSIVE PLEADING

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the missing corporate disclosure statement was filed on November 10, 2023. Doc. #27. Therefore, this order to show cause will be VACATED.

3. [23-10947](#)-A-13 **IN RE: SONIA LOPEZ**
[23-1039](#) [CAE-2](#)

ORDER TO SHOW CAUSE
10-31-2023 [[14](#)]

LOPEZ V. UNIFIED MORTGAGE SERVICE, INC. ET AL
RESPONSIVE PLEADING

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

On October 19, 2023, attorney Edward T. Weber prepared, filed and served an answer to the complaint in this adversary proceeding on behalf of defendant Capital Benefit Mortgage, Inc. ("Defendant") along with several other defendants. Doc. ##7, 8; Decl. of Edward T. Weber, Doc. #21. On October 20, 2023, attorney Edward T. Weber prepared, filed and served an amended answer to

the complaint in this adversary proceeding on behalf of several defendants, but not Defendant. Doc. ##9, 10; Weber Decl., Doc. #21.

On October 31, 2023, this court issued an order to show cause as to why the answer and amended answer filed on behalf of Defendant should not be stricken for the failure of Defendant to file the required corporate disclosure statement pursuant to Federal Rule of Bankruptcy Procedure 7007.1 ("OSC"). Doc. #14.

On November 10, 2023, Mr. Weber filed a declaration in response to the OSC explaining that the answer was inadvertently filed on behalf of Defendant even though Mr. Weber does not represent Defendant, and the amended answer filed the day after the answer was filed removed Defendant from the list of Defendants on whose behalf the amended answer was filed. Weber Decl., Doc. #21.

Because it appears that the answer was inadvertently filed on behalf of Defendant and the amended answer removed Defendant from the list of defendants on whose behalf an answer was filed, the court finds that Defendant has not yet appeared in this adversary proceeding and the obligation to comply with Federal Rule of Bankruptcy Procedure 7007.1 has not yet arisen. Therefore, this order to show cause will be VACATED.

4. [23-10947](#)-A-13 **IN RE: SONIA LOPEZ**
[23-1039](#) [CAE-2](#)

ORDER TO SHOW CAUSE
10-31-2023 [\[15\]](#)

LOPEZ V. UNIFIED MORTGAGE SERVICE, INC. ET AL

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the missing corporate disclosure statement was filed on November 10, 2023. Doc. #23. Therefore, this order to show cause will be VACATED.

5. [23-10947](#)-A-13 **IN RE: SONIA LOPEZ**
[23-1039](#) [CAE-2](#)

ORDER TO SHOW CAUSE
10-31-2023 [\[16\]](#)

LOPEZ V. UNIFIED MORTGAGE SERVICE, INC. ET AL

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the missing corporate disclosure statement was filed on November 10, 2023. Doc. #30. Therefore, this order to show cause will be VACATED.

6. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
7-8-2021 [[203](#)]

NICOLE V. T2M INVESTMENTS, LLC

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

DISPOSITION: Continued to January 11, 2024 at 11:00 a.m.

ORDER: The court will issue an order.

On November 21, 2023, the plaintiff filed a motion for reconsideration that is set for hearing on January 11, 2024. Doc. ##488-491. The status conference will be continued to be heard in connection with the motion for reconsideration.

7. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[23-1029](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
7-12-2023 [[1](#)]

NICOLE V. AAA INSURANCE ET AL
REISSUED SUMMONS FOR 1/11/24, RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 11, 2024 at 11:00 a.m.

ORDER: The court will issue an order.

Based on the re-issued summons and the statement by the plaintiff that she is unable to appear on November 30, 2023 due to a family emergency (Doc. #21), the status conference will be continued to January 11, 2024 at 11:00 a.m.