UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, December 16, 2020
Place: Department B – Courtroom #13
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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. 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. 18-11201-B-13 **IN RE: DOUGLAS PARKS**
FW-6

MOTION TO BORROW
11-24-2020 [129]

DOUGLAS PARKS/MV
PETER FEAR/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 will submit a proposed order after hearing.

This motion was filed and served 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.

This motion will be GRANTED.

Douglas Parks ("Debtor") asks the court for permission to borrow $319,113.00 at a rate of 4.5% to purchase the home he is currently renting located in Fresno, California ("Property"). Doc. #129. The loan will be secured solely by the Property. Doc. #131, ¶ 13. The monthly payment is projected to be $2,269.03, which includes principal, interest, mortgage insurance, hazard insurance, and taxes. *Id.*, ¶¶ 7-8. No party has opposed the motion.

Debtor filed chapter 13 bankruptcy on March 30, 2018 and confirmed a chapter 13 plan on August 23, 2018. Doc. #1; #85; *see also* FW-3. A modified plan was filed on January 30, 2019, which was confirmed on May 1, 2019. Doc. #116; FW-5. Debtor's current plan provides for monthly payments of $600.00. Doc. #100, ¶ 2.01. At the time of the modification, Debtor's amended schedules indicated that he paid $1,325.00 in rental expenses per month. Doc. #103, Schedule J at ¶ 4.

Debtor states the reason he needs to purchase this home is because his landlord ("Landlord") "informed [Debtor] that they no longer

wish to rent out the home [Debtor] has been living in, and that they want to sell it." Doc. #131, ¶ 2. As result, Landlord has begun the eviction process. *Ibid.* Debtor is presently protected by California's eviction moratorium, but this protection will not last forever. *Ibid.* In Debtor's declaration, he further states that he reviewed and investigated rental options, but due to the current state of his credit and his business, which requires space to park multiple business trucks, he cannot find another place that meets his needs. *Id.*, ¶ 3.

However, Debtor received pre-approval for a mortgage to purchase a home with a price of up to $325,000.00. *Id.*, ¶ 4. Debtor estimates that accepting this mortgage offer will require him to pay a maximum of $22,913.00 at closing for fees, a down payment, and closing costs. *Id.*, ¶ 5. Debtor's adult son, whom Debtor attests is financially able, has agreed to gift the entire down payment. *Ibid.* After applying this gift, as mentioned above, the maximum terms of the mortgage will include the following:

Total Amount Financed	$319,113.00
Interest Rate	4.5%
Projected Monthly Payment	$2,269.03
Loan Period	30 years

Id., ¶ 7. Debtor amended his Schedules I and J on November 24, 2020 to update his rental or home ownership expenses to $2,269.03, thus demonstrating that he could still maintain his $600.00 per month plan payment with monthly disposable income of $606.27. Doc. #132, Schedule J, ¶¶ 4, 23c. Debtor further attests that all payments required by his chapter 13 plan are current and the plan is not in default.

After review of the included evidence, the court finds that Debtor is able to make the monthly payment for Property. As noted above, no party in interest filed opposition but written opposition was not required. Unless opposition is presented at the hearing, the court is inclined to GRANT the motion.

Debtor will be authorized, but not *required*, to incur further debt to purchase his home in Fresno, California for $319,113.00 at 4.5% interest with an estimated monthly payment of $2,269.03. Should Debtor's budget prevent maintenance of the current plan payment, Debtor shall continue making plan payments until the plan is modified.

2. 20-10314-B-13 **IN RE: SERGIO MADRID AND ELIZABETH MAGANA**
UST-4

MOTION FOR REVIEW OF FEES
11-18-2020 [84]

TRACY DAVIS/MV
MARK HANNON/ATTY. FOR DBT.
JASON SHORTER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The hearing will be a scheduling conference.

ORDER: The court will issue the order.

The United States Trustee for Region 17 ("UST") asks the court for an order requiring suspended attorney Thomas O. Gillis, Gillis Law (collectively "Gillis"), attorney Mark J. Hannon ("Hannon"), and Latino Law, Inc. disgorge $4,000.00 to former Chapter 13 debtors Sergio Madrid and Elizabeth Magana ("Debtors").[1] Gillis and Hannon oppose, and UST replied.

UST claims the application of 11 U.S.C. § 329, and Federal Rules of Bankruptcy Procedure 2016 and 2017 and Local Bankruptcy Rule 2016-1 require disgorgement of the $4,000.00 fee Debtors paid to Gillis or Latino Law.[2] Gillis and Hannon disagree.

Background

On November 1, 2019, the State Bar of California issued an order suspending Gillis from practicing law for two years effective December 1, 2019. Doc. #88. The effective date of the suspension was extended twice at Gillis' request: on November 27, 2019 to January 31, 2020; on February 7, 2020 to February 15, 2020. *Id.*

In late December 2019, the Debtors needed bankruptcy relief because a foreclosure sale on their residence was scheduled for the first week of January 2020. They went to Gillis for assistance, but Gillis was not in the office then. Never meeting Gillis until much later, they worked extensively with a paralegal in Gillis' office named Consuelo. But Consuelo contacted Gillis who directed her to prepare what was necessary "for the Plan." *Id.*

[1] The shortened references to The United States Trustee, Messrs. Gillis, Hannon, Madrid, and Ms. Magana are for ease of following the ruling only. No disrespect is intended.

[2] Unless otherwise indicated, references to "Sections" will be to the United States Bankruptcy Code; "Rules" will be to the Federal Rules of Bankruptcy Procedure; "LBR" to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California.

She did. The Debtors paid Gillis $4,000.00 “up front” on December 27, 2019. *Id.*

The $4,000.00 payment is significant because it represented the allowed presumptive or “no look” fee for individual Chapter 13 cases under LBR 2016-1. So, the Debtors paid a full fee for a complete bankruptcy case before the case was filed.

Gillis prevailed upon the foreclosure company to continue the sale date to the end of January 2020. The Debtors spoke to Gillis once on the phone before they filed. The details of that conversation are unknown. Consuelo, the paralegal, prepared the schedules and Statement of Affairs and discussed them with the Debtors.

Gillis did not sign the bankruptcy petition and schedules. Hannon did on January 16, 2020.[3] The Petition that Hannon signed includes a “declaration” that Hannon “informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12 or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. . . .” That apparently did not happen as the Debtors testified in a Rule 2004 examination-the testimony is unrefuted-that they never met nor spoke with Hannon until the day of their Meeting of Creditors. Doc. #88.

The Debtors’ bankruptcy case was filed on January 30, 2020-one day before expiration of Gillis’ first suspension extension. Their meeting of creditors, attended by both Gillis and Hannon, was about one month later. The meeting was adjourned. The Debtor’s chapter 13 Plan was confirmed over the Chapter 13 Trustee’s objection on April 14, 2020. Four months later, the case was dismissed on the Chapter 13 Trustee’s motion for failure to maintain Plan payments. Thereafter the case was closed. In mid-November 2020, UST requested the case be reopened. It was. UST then filed this motion.

Contentions of the Parties

UST contends that Gillis should disgorge $4,000.00 because he accepted that amount knowing his suspension was approaching and he could not complete the bankruptcy case. UST also claims Hannon should be required to disgorge the fee because he did not perform services of comparable value to what the Debtors paid. Specifically, UST asserts that Hannon breached the Rights and Responsibilities agreement since the Debtors thought they were hiring Gillis and Hannon did not meet with them until the meeting of creditors.

UST also claims Hannon falsely represented to the court that he explained the various bankruptcy options to the Debtors since he signed the petition without meeting with the Debtors. Also, UST blames the early dismissal of the Debtors’ case on Hannon’s lack of assistance during the Chapter 13 process. UST seeks alternative relief of either total disgorgement of the “no look” fee to the

[3] Hannon signed the Petition, the Disclosure of Compensation and the “Rights and Responsibilities” but referenced the firm Latino Law, Inc. on the petition and the disclosure. Doc. #1; #4.

Debtors or disgorgement of another amount as determined by the court.

Gillis contends that he obtained a short postponement of the foreclosure sale, spoke on the phone with the Debtors once before the creditors meeting, and was ultimately successful in confirming a Plan for the Debtors. He disputes UST's "reasonable value" claim arguing Hannon and he attended the creditor's meeting, the plan was confirmed over the Trustee's objection and the reason for the dismissal was Debtor's lack of income due to the COVID-19 pandemic, not lack of attention to the Debtors' case. He also asserts the Debtors were not abandoned and Hannon's office (presumably with Gillis' assistance) completed a mortgage modification for the Debtors.

Hannon asserts he was employed by Gillis on a part time basis in December 2019 when the Debtors originally sought assistance. He also claims he never received a fee for the case and completed it for free. On that point, Gillis also claims Hannon was his associate until some unspecified time when he became Hannon's paralegal (presumably because Gillis could no longer practice law). Gillis also urges that Hannon is not ordered to disgorge anything since he received nothing from the Debtors.

In reply, UST stresses Gillis and Hannon's alleged lack of or misrepresented disclosures. As to Gillis, UST re-iterates that Gillis' acceptance of the $4,000.00 "no look" fee from Debtors in December 2019 was not disclosed. Hannon's apparent false statement about advising the Debtor's pre-petition concerning their options under the bankruptcy code is also stressed. UST also repeats the "reasonable value" arguments.

Analysis and Remaining Open Issues

We begin with what seems uncontroversial. First, the court has authority to cancel any agreement between a debtor and counsel and order disgorgement for compensation that exceeds the reasonable value of services. § 329(b). This section is implemented by Rule 2017. Second, the burden of proof is on counsel to establish reasonable value of services. *Am. Law Ctr. PC v. Stanley (In re Jastrem)*, 253 F. 3d 438, 443 (9th Cir. 2001). Third, the court has broad, inherent authority to deny compensation or order the disgorgement of attorney's fees for an attorney's failure to meet statutory requirements for professionals under the bankruptcy code[4] or failure of an attorney to obey the disclosure requirements of the Code or the Rules. *Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis)*, 113 F. 3d 1040, 1045 (9th Cir. 1997).

Also, uncontroversial based on the record so far are the following facts:

1) Gillis received $4,000.00 from the Debtors up front on December 27, 2019.

[4] See sections 327, 329, 330, 331.

2) Gillis spoke with the Debtors once over the telephone before their bankruptcy case was filed. Doc. #88; #97.
3) Hannon signed the petition and accompanying documents which included a "declaration" that Hannon had informed the Debtors about their eligibility to proceed under various chapters of the Code and explained the relief available under each chapter.
4) Hannon did not inform the Debtors as represented and the Debtors first met Hannon on the day of their meeting of creditors.
5) Hannon also represented in the Disclosure of Compensation that he agreed to accept $4,000.00 for services rendered or to be rendered and that he received that amount "prior to filing" the Disclosure of Compensation. Doc. #1.
6) Hannon claims he did not receive a fee for handling the Debtors' case. Doc. #92.

UST claims these facts warrant disgorgement independent of the services performed. Perhaps. But excessiveness or reasonableness is not irrelevant in all cases. In appropriate circumstances, a bankruptcy court should inquire into these subjects as part of deciding whether and to what extent to order disgorgement. *Lewis*, 113 F. 3d at 1045. Thus, the question: Is this an appropriate circumstance? Here is where the record is lacking.

The reasonableness inquiry under § 329 was exhaustively analyzed in *In re Cervantes*, 617 B.R. 687 (Bankr. E.D. Cal. 2020). Should the "reasonableness" inquiry be relevant here, the "rubric" developed in *Cervantes* will inform this court's ruling.

Now though there are factual issues that need further development before the court can properly rule. Those issues include:

1) The relationship between "Latino Law, Inc." and Gillis and Hannon during the relevant period. The Debtors' Statement of Affairs states they paid "Latino Law" the retainer when the documentation including "Gillis Law" receipts shows otherwise.
2) The Debtors' testified at the 2004 examination that they signed something acknowledging that "Gillis Law" would have a "name change" to "Latino Law." This contradicts some testimony that the Debtors knew nothing about "Latino Law."
3) When did the transition occur from Hannon being Gillis' employee to Gillis becoming Hannon's "paralegal?"
4) There is no record that either Gillis or Hannon ever filed or transmitted to the UST the details of any sharing agreement between them. See Rule 2016(b). Either the rule was violated, or Hannon was Gillis' employee when the Debtors' case was filed. The latter suggests "Latino Law" was in fact Gillis' firm raising further questions about Hannon's representations in the schedules.
5) Was there a transfer of Debtors' funds from Gillis to Latino Law before the petition was filed?
6) The nature of Gillis pre-petition communication with the Debtors (the one phone call). Was the transfer to Latino Law discussed? Were chapter alternatives discussed?

7) The reasons, if any, for Hannon's apparent misrepresentation about his communications with the Debtors before filing. This may implicate Rule 9011 (b) (3).
8) If there was no sharing of compensation between Gillis and "Latino Law," why does the Disclosure of Compensation state Hannon and "Latino Law" accepted $4,000.00?

These are some of the many questions that need answering before an appropriate order can be made addressing this request for fee review.

Though Gillis and Hannon claim Hannon received nothing for his work on the case, that does not insulate the transactions involved here from review. The bankruptcy court may order disgorgement of any payment made to an attorney representing the debtor in connection with a bankruptcy proceeding. *Lewis,* 113 F. 3d at 1046.

At the hearing, the court will inquire as to all parties' needs for further discovery and set dates for further submissions or testimony on this matter.

3. 20-12516-B-13 **IN RE: JEFFREY/NOEMI LAWS**
MHM-2

MOTION TO RECONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
11-16-2020 [48]

MICHAEL MEYER/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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Chapter 13 Trustee Michael Meyer ("Trustee") filed this motion to either re-convert this case to chapter 7 or dismiss under 11 U.S.C. § 1307 for unreasonable delay that is prejudicial to creditors. Doc. #48. Jeffrey Laws and Noemi Laws ("Debtors") did not timely file written opposition.

This motion will be GRANTED.

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. Section 1307(c)(1) allows for conversion or dismissal for "unreasonable delay by the debtor that is prejudicial to creditors[.]"

Here, Trustee has requested either conversion or dismissal pursuant to 11 U.S.C. §§ 1307(c)(1). Trustee alleges that Debtors have failed to file: (1) a chapter 13 plan and set it for hearing; and (2) Official Form 122C-1, *Statement of Monthly Income*. Doc. #50, ¶¶ 8-10.

Debtors filed a chapter 7 petition on July 30, 2020. Doc. #1. On September 17, 2020, Debtors moved to convert the case from chapter 7 to chapter 13, which this court granted on October 22, 2020. Doc. #28; *see also*, SL-1. As part of the moving papers on this motion, Ms. Laws filed a declaration implying that a chapter 13 plan was in progress because she "[was] confident that [Debtors] have the ability to maintain [their] plan payments for an extended period of time, that [Debtors] can get [their] case confirmed and make all the necessary payments to the Trustee in a timely fashion." Doc. #22, ¶ 7. It seems that no such plan was ever filed, nor was Form 122C-1.

Additionally, as noted in our last ruling, the Office of the United States Trustee ("UST") filed a statement of no presumed abuse on September 23, 2020. Doc. #24. Although the initial documents submitted by Debtors indicated that a presumption of abuse under 11 U.S.C. § 707(b)(2) had arisen, UST determined that there was no abuse after reviewing Debtors' materials. *Ibid.*

Lastly, the former chapter 7 trustee, James Salven, filed a motion for compensation on October 30, 2020, which this court granted on December 3, 2020. *See* Doc. #53. As part of our ruling, this court authorized payment of $1,302.50 to Mr. Salven as reasonable compensation pursuant to 11 U.S.C. §§ 326(a) and 330(a) for completion of chapter 7 trustee services.

Shortly after this case was converted, the Clerk of Court sent Debtors a notice that their chapter 13 plan and Form 122C-1 were due by November 6, 2020. Doc. #29. Again, no such plan or Form 122C-1 were ever filed. The Meeting of Creditors was held on December 1, 2020 and continued to December 22, 2020 because Debtors did not appear. *See* docket generally. It seems Debtors have ceased prosecuting their case since converting to chapter 13, which is sufficient to dismiss or convert the case depending upon the best interests of creditors.

The court has reviewed the amended schedules and it appears there are at least $56,194.00 in non-exempt assets in the estate that could be administered for the benefit of unsecured claims. Reviewing the amended schedules filed August 5, 2020, Debtors' total property value is $243,038.72 consisting of $175,000.00 in real estate, $61,218.00 in vehicles, and $6,820.72 in other personal property. Doc. #8, Schedule A/B, ¶ 63. Meanwhile, Debtors have exempted approximately $185,679.03 in assets. *Id.*, Schedule C, ¶ 2. This leaves approximately $57,359.69 in unexempted assets, which consists of a 2015 Mercedes Benz ML350 valued at $18,194.00 and a 2006 Bounder 35H RV/Class RX valued at $38,000.00. *Id.*, A/B, ¶¶ 3.1, 4.1. The other remaining $1,165.69 appears to be non-exempt or partially exempt personal property that would be more difficult to liquidate to provide disbursement to creditors.

Because there are non-exempt assets that could be liquidated for the benefit of creditors, conversion of the case under § 1307 appears to be in the best interests of creditors. Nothing in § 1307 precludes the court from converting this case back to chapter 7 even though it was only recently converted to chapter 13.

However, as we noted in our October 20, 2020 minutes, Debtors had not previously converted to chapter 7 from another chapter, which is what allowed them to be chapter 13 debtors under § 1307(c). *See* Doc. #27. While it is not impossible to re-covert back to chapter 13, doing so again in the future will have the additional hurdle of showing that Debtors are eligible to be debtors under chapter 13. Debtors did not file any response, so their defaults will be entered.

For the foregoing reasons, this motion will be GRANTED, and this case shall be re-converted to chapter 7. Cause exists to convert the case because Debtors have delayed filing Form 122C-1 and a chapter 13 plan. This delay is prejudicial to creditors. Having reviewed Debtors' schedules and concluded that there are non-exempt assets totaling at least $57,359.69, the best interests of the creditors dictate that this case be re-converted back to chapter 7.

4. 20-12664-B-13 **IN RE: NIOMI/CARLOS MEJIA**
STL-1

MOTION TO AVOID LIEN OF ALLIED SERVICING CORPORATION
11-10-2020 [39]

NIOMI MEJIA/MV
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

This matter was filed on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

Pro se debtors Niomi Mejia and Carlos Mejia ("Debtors") filed this motion to avoid the lien of Allied Servicing Corporation. Doc. #39. On December 2, 2020, Ashland Capital Fund, LLC ("Creditor") objected to Debtors' motion. Doc. #51. This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the local rules.

The LBR "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure." LBR 1001-1(b). The most up-to-date rules can be found at the court's website, www.caeb.uscourts.gov, towards the middle of the page under "Court Information," "Local Rules & General Orders." The newest rules came into effect on April 9, 2018.

The court notes that Debtors are not represented by counsel. Debtors are urged to review the LBR before filing another motion or objection.

First, LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

Here, the original motion documents filed November 10, 2020 did not contain a DCN. *See* Doc. #39-44; #58. An Amended Notice of Hearing was filed on November 12, 2020 with the DCN STL-1. Doc. #46. This notice's certificate of service did not contain a DCN. Doc. #47. But an Objection to Confirmation of Plan of Ashland Capital Fund, LLC was previously filed on September 28, 2020 (Doc. #23) and sustained in part and overruled in part on October 23, 2020. Doc. #32. The DCN for that objection was STL-1. This amended notice also has a DCN of STL-1 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

Second, LBR 9014-1(f)(1)(B) states that motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any opposition to the motion must be in writing and must be filed with the court at least 14 days preceding the date or continued date of the hearing.

This motion was filed on November 10, 2020 and set for hearing on December 16, 2020. Doc. #39, #40. December 16, 2020 is thirty-six (36) days after November 10, 2020, and therefore this hearing was set on 28 days' notice under LBR 9014-1(f)(1). The original notice stated:

> Objections and / or requests for a hearing, if any, as to the above-proposed motion, must be in writing and filed with the Clerk . . . and served upon [Debtors], *not later than 28 days after the service of this notice*. *Any objection or opposition* must be accompanied by declarations

> and / or memorandum of law the objecting party wishes to present in support of the objection. If an objection is timely filed and served upon the undersigned, this office will obtain a court hearing date and give at least 10 days' written notice of the hearing to the objecting party. Any objections not timely filed and served shall be deemed waived. The moving party may then ask that the Court approve the proposed action by default without a hearing.

Doc. #40 (emphasis in original). Moreover, this notice and the accompanying motion documents filed on November 10, 2020 did not contain the date, time, and location of the hearing in the caption page as required by LBR 9004-2(b)(5). *Ibid.*; *see also* Doc. #45. Debtors' amended notice filed November 12, 2020 did contain the date, time, and location of the hearing, but was silent as to how respondents could oppose the motion, if at all. Both notices are incorrect. Because the hearing was set on 28 days' notice, the notice should have stated that written opposition was required and must be filed and served not less than 14 days before the hearing date. The language of LBR 9014-1(f)(1)(B) should have been included in the notices.

Third, the notices did not contain the language required by LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

Fourth, LBR 9004-2(c)(1) requires that all declarations, exhibits, *inter alia*, shall be filed as separate documents. Here, the declaration contained two exhibits that were not filed as a separate exhibit document. Doc. #43. Debtors' later-filed exhibit document entitled "Cover of Explanation" contained a certificate of service that was not filed separately. Doc. #58. This final filing should have separated the certificate of service from the exhibit document. Debtors may combine multiple exhibits into one document but may not combine different types of documents into one filing. *See* LBR 9004-2(d). All of these documents must be filed separately, except exhibits as discussed below, and linked together using a DCN.

Fifth, the exhibits submitted as part of the declaration did not contain a properly formatted exhibit index or consecutively numbered pages as required by LBR 9004-2(d)(2) & (3). LBR 9004-2(d)(2) requires exhibits to include an exhibit index at the start of the document listing and identifying each exhibit with an exhibit number or letter and state the page number at which each exhibit is located within the exhibit document. LBR 9004-2(d)(3) requires the exhibit document pages, including the exhibit page and any separator, cover, or divider sheets to be consecutively numbered.

The exhibits included in the declaration did not have an exhibit index identifying the exhibit document page number where each exhibit is located. Doc. #43. The exhibit document was also not consecutively numbered throughout, including exhibit pages and any

separator, cover, or divider sheets. Notably, the exhibit document filed December 9, 2020 as a support document entitled "Cover of Explanation" does resemble an exhibit index despite omitting Exhibit A through C's corresponding page numbers. *See* Doc. #58. This exhibit document still does not comply with LBR 9004-2(d)(2) and (3), but it is a slight improvement because it states which exhibits are included.

Sixth, California Code of Civil Procedure ("C.C.P.") § 416.40 states:

> A summons may be served on an unincorporated association (including a partnership) by delivering a copy of the summons and of the complaint:
>
> (a) If the association is a general or limited partnership, to the person designated as agent for service of process in a statement filed with the Secretary of State or to a general partner or the manager of the partnership;
>
> (b) If the association is not a general or limited partnership, to the person designated as agent for service of process in a statement filed with the Secretary of State or to the president, a secretary or assistant secretary, a treasurer, or assistant treasurer, a general manager, or a person authorized by the association to receive service of process;
>
> (c) When authorized by Section 18220 of the Corporations Code, as provided by that section.

C.C.P. § 416.40. Here, the certificates of service indicate that Creditor was served at the following address:

> **STEEL LLP**
> Attn: JOHN C.STEELE
> 17272 RED HILL AVENUE
> IRVINE, CA 92614

Doc. #44; #46; #58 (emphasis in original). The certificate of service states that Creditor's attorney was served. However, Creditor was not properly served. Creditor is a limited liability company, and therefore C.C.P. § 416.40 requires that service be addressed to the president or other head of the association, vice president, secretary, assistant secretary, treasurer, assistant treasurer, general manager, or person authorized to receive service of process.

Creditor is a limited liability company. According to Creditor's proof of claim, Allied Servicing Corporation ("ASC") at 3019 N. Argonne Rd., Spokane Valley, WA 99212 is where notices to Creditor should be sent. Claim #3-1. When searching ASC within the records of the Washington Secretary of State (www.sos.wa.gov/corps/), Sheila White is the registered agent for service of process at the same address on the proof of claim. The listing further indicates that Sheila White and Melissa Bolling are ASC's Governors.

Meanwhile, Creditor itself appears to be registered in Illinois. Searching the Illinois Secretary of State website (www.apps.ilsos.gov/corporatellc/), Creditor's agent for service of process is Nicolas Nelson at 27 W. Park Blvd. Villa Park, IL 60181. The listing additionally lists Scott Smith and Matthew Kelley as managers, who can be both be reached at PO Box 194, Wilmette, IL 60091.

To comply with C.C.P. § 416.40, Debtors' certificates of service should have noted that the motion documents were addressed to a named officer of Creditor and ASC. Creditor could have been properly serviced if addressed specifically to any of the following: (1) Nicolas Nelson; (2) Scott Smith; (3) Matthew Kelley; (4) the name of another known officer or authorized service agent; or (5) generally addressed to an officer or president if the name of a service of process agent was not known. To properly serve ASC, Debtors' certificate of service should have stated that the motion documents were addressed specifically to any of the following: (1) Sheila White; (2) Melissa Bolling; (3) the name of another known officer or authorized service agent; or (4) generally addressed to an officer or president if the name of a service of process agent was not known.

Despite these procedural errors, the court must treat *pro se* litigants "with great leniency when evaluating compliance with the technical rules of civil procedure." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) (citing *Draper v. Coombs*, 795 F.2d 915, 924 (9th Cir. 1986), *inter alia*). "Thus, before dismissing a *pro se* complaint the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively." *Ibid.* (citing *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987)). Even with great leniency, the court is still constrained by the law. *See King v. Burwell*, 135 S. Ct. 2480, 2505 (2015).

On December 2, 2020, Creditor objected to Debtors' motion. Doc. #51. The objection did not raise these notice deficiencies and appears to be waiving its right to assert improper noticing, service, or any other violations of the LBR. This court was initially inclined to consider the merits of the motion and continue the matter to allow Creditor to conduct its own independent appraisal of the subject property. However, because this motion both does not have a DCN and reuses an old DCN, STL-1, a continuance would result in additional filings either without a DCN or under the DCN STL-1. This would entangle the docket with a confusing and difficult-to-follow document trail while the above procedural defects continue unresolved. Therefore, Debtors will need to file a new motion conforming to the LBR.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

5. 15-13470-B-13 **IN RE: JULIA MOREAU**
MHM-1

MOTION TO DISMISS CASE
11-16-2020 [34]

MICHAEL MEYER/MV
RICHARD STURDEVANT/ATTY. FOR DBT.
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 court will issue the order.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

This motion will be GRANTED. Chapter 13 Trustee Michael Meyer ("Trustee") asks the court to dismiss this case because Julia Ann Moreau ("Debtor") is delinquent in the amount of $1,348.91 as of November 16, 2020, which appears to be the final payment of her chapter 13 plan. Doc. #34; #36. Debtor timely responded, stating that she would be current by the time of the hearing. Doc. #38.

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) for delinquent plan payments.

The court has looked at Schedules A, B, and Amended Schedule C and it appears there are no non-exempt assets in the estate to be administered for the benefit of unsecured claims. Doc. #1; #19. Debtor owns real property in Fresno, California, but it is encumbered and exempted up to its full value. *Id.* Moreover, Debtor exempted $2,975.00 of her personal property valued at $3,012.00. *Id.* There appears to be *de minimis* equity in the estate sufficient for disbursement to creditors and thus no reason to convert the case to chapter 7.

This matter will be called to confirm whether Debtor is current. If Debtor is current on plan payments, the motion will be denied. If Debtor is not current, the court will consider the parties respective positions and will either dismiss the case or order a short continuance.

6. 18-13595-B-13 **IN RE: DIMAS COELHO**
TCS-4

MOTION TO MODIFY PLAN
11-10-2020 [88]

DIMAS COELHO/MV
TIMOTHY SPRINGER/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion will be 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.

11:00 AM

1. 19-15103-B-7 **IN RE: NATHAN/AMY PERRY**
   20-1017

   FURTHER STATUS CONFERENCE RE: COMPLAINT
   3-15-2020 [1]

   RICHNER ET AL V. PERRY
   RICHARD FREEMAN/ATTY. FOR PL.
   RESPONSIVE PLEADING

NO RULING.

2. 18-13677-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A** CALIFORNIA LOCAL HEALTH CARE DISTRICT
   20-1060

   STATUS CONFERENCE RE: COMPLAINT
   10-19-2020 [1]

   COALINGA REGIONAL MEDICAL
   CENTER, A CALIFORNIA LOC V.
   RILEY WALTER/ATTY. FOR PL.

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

DISPOSITION: Continued to February 10, 2021 at 11:00 a.m.

ORDER: The court will issue an order.

Per this court's last order, the time for Defendant Department of Health Care Services to file its responsive pleading to the complaint was extended to December 18, 2020. Doc. #10. Plaintiff Coalinga Regional Medical Center filed a status conference report requesting that the status conference be continued one month to allow for the responsive pleading to be filed and the meet and confer to take place. Doc. #11.

Accordingly, this status conference will be continued to February 10, 2021 at 11:00 a.m. The parties shall proceed with Initial Disclosures under Fed. R. Civ. P. 26(a) (incorporated by Fed. R. Bankr. P. 7026). Initial Disclosures shall be due not later than January 27, 2021. The parties shall file and serve a joint or unilateral status report on or before February 3, 2021.