

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

Honorable Christopher D. Jaime  
Robert T. Matsui U.S. Courthouse  
501 I Street, Sixth Floor  
Sacramento, California

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: December 21, 2021**

**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  
Sacramento, California

December 21, 2021 at 1:00 p.m.

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1. [21-20514](#)-B-13 IGNACIO/EVANGELINA AVILA MOTION TO RECONVERT CASE FROM  
[RDG](#)-1 David C. Johnston CHAPTER 13 TO CHAPTER 7 (FILING  
FEE NOT PAID OR NOT REQUIRED)  
12-7-21 [[54](#)]

**Final Ruling**

Before the court is a motion by the Chapter 13 Trustee ("Trustee") to reconvert this chapter 13 case to a chapter 7 case. The court is aware that the Trustee's motion to reconvert was filed under Local Bankr. R. 9014-1(f)(2). At the same time, the court retains authority to *sua sponte* reconvert a chapter 13 case to chapter 7 case when necessary and appropriate. See *Metheny v. JL Beverage Co., LLC*, 2017 WL 661353 at \*2, n.1 (N.D. Cal. Feb. 17, 2017); see also *Finney v. Smith (In re Finney)*, 992 F.2d 43, 45 (4th Cir. 1993). Necessary and appropriate circumstances exist here, and they render further briefing on the motion unnecessary.<sup>1</sup> See Local Bankr. R. 1001-1(f), 9014-1(h).

The court has reviewed the motion and its related declaration. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1). Findings of fact and conclusions of law are set forth below. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052, 9014(c).

The court's decision is to grant the motion to reconvert case from chapter 13 to chapter 7.

**Background**

Debtors Ignacio and Evangelina Avila ("Debtors") initially filed a chapter 7 petition on February 15, 2021. The 11 U.S.C. § 341(a) meeting of creditors in the chapter 7 case was set and noticed for April 15, 2021.

The Debtors and their attorney of record failed to appear at the April 15, 2021, § 341(a) creditors' meeting and it was continued to April 29, 2021.

The April 29, 2021, creditors' meeting was subsequently continued to May 13, 2021.

The Debtors failed to appear at the May 13, 2021, § 341(a) creditors' meeting and it was continued to June 10, 2021.

The Debtors failed to appear at the June 10, 2021, § 341(a) creditors' meeting and it

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<sup>1</sup>At a very minimum, the Debtors were on notice from September 7, 2021, that the failure to timely file required documents could result in dismissal of their chapter 13 case. See dkt. 39. The Debtors ignored the deadline before it expired and they have continued to flaunt it in the three months since it expired. The point here is that the Debtors have had adequate notice that potential adverse consequences await them if they continued to disregard their statutory, rule-required, and court-ordered duties as they have elected to do.

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was continued to July 22, 2021.

The Debtors and their attorney of record failed to appear at the July 22, 2021, § 341(a) creditors' meeting and it was continued to August 5, 2021.

The August 5, 2021, § 341(a) creditors' meeting was continued to September 5, 2021, because on August 4, 2021, the day prior to the fifth continued § 341(a) creditors' meeting and after being in a chapter 7 case for nearly six months, the Debtors moved to convert their chapter 7 case to a chapter 13 case. The motion to convert was granted on August 30, 2021.

After conversion of the bankruptcy case from chapter 7 to chapter 13, on September 7, 2021, the court issued a notice for the Debtors to file documents in the converted chapter 13 case. The notice set a September 21, 2021, deadline for the Debtors to file a chapter 13 plan and a Form 122C-1 Statement of Monthly Income. The Debtors failed to file a chapter 13 plan and the Form 122C-1 by the September 21, 2021, deadline. Those documents remain unfiled as of the date of this decision.

A Notice of Conversion to Chapter 13, Meeting of Creditors and Deadlines filed on October 1, 2021, set the chapter 13 § 341(a) creditors' meeting for October 27, 2021.

The Debtors failed to appear at the October 27, 2021, § 341(a) creditors' meeting and it was continued to November 17, 2021.

The Debtors and their attorney of record again failed to appear at the continued November 17, 2021, chapter 13 § 341(a) creditors' meeting and, again, it was continued to December 1, 2021.

The Debtors and their attorney of record again failed to appear at the continued December 1, 2021, § 341(a) creditors' meeting and, again, it was continued to January 5, 2022.

## **Discussion**

By repeatedly failing to appear for examination under 11 U.S.C. § 341(a) the Debtors have disregarded one of the most basic obligations in a bankruptcy case. See 11 U.S.C. § 343. The Debtors have also disregarded their statutory and rule-required duties, and a court-imposed deadline, to file a chapter 13 plan and a Form 122C-1. See 11 U.S.C. § 521(a)(1)(B)(v) and § 1321; Fed. R. Bankr. P. 4002(a)(1), (b); Dkt. 39. Meanwhile, in the absence of compliance with these duties, the Debtors have enjoyed the benefit of the automatic stay of 11 U.S.C. § 362(a) for nearly one year.

The Debtors' conduct amounts to bad faith and it is an abuse of the bankruptcy process. The Debtors' conduct is also unduly prejudicial to creditors who expect-and are entitled-to be paid under a chapter 13 plan. Accordingly, there is cause to dismiss or convert under 11 U.S.C. § 1307(c). *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (9th Cir. BAP 2011) (a debtor's unjustified failure to expeditiously accomplish any plan-confirmation task may constitute cause under § 1307(c)(1)).

The length and extent to which the Debtors have disregarded their duties makes the Debtors' conduct particularly egregious. Reconversion is therefore necessary to address the Debtors' bad faith and abuse and it is also appropriate to immediately prevent the Debtors' bad faith and abusive conduct from continuing.

The Trustee has determined that there are assets available to administer for the benefit of creditors. The court also notes that the trustee appointed in the chapter 7 case employed counsel before the chapter 7 case was converted to a chapter 13 case. See dkts. 20-24. Conversion back to a chapter 7 case rather than dismissal of this chapter 13 case is therefore in the best interest of creditors and the estate. The court also expresses concern that dismissal would result in yet another filing with another round of the same bad faith and abusive conduct by the Debtors.

Therefore, for the foregoing reasons, as stated in the minutes the Trustee's motion to

reconvert will be GRANTED and this chapter 13 case will be RECONVERTED to a chapter 7 case.

The motion to reconvert is ORDERED GRANTED.

The court will issue an order.

2. [17-26647](#)-B-13 ESMERALDA GARCIA  
[JCK](#)-7 Kathleen H. Crist

CONTINUED MOTION TO SELL  
11-30-21 [[92](#)]

**Final Ruling**

This matter was continued from December 14, 2021, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, December 17, 2021. Nothing was filed. Therefore, the court's ruling at dkt. 101, conditionally granting the motion to sell, shall become the court's final decision. The continued hearing on December 21, 2021, at 1:00 p.m. is vacated.

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

Debtor's attorney shall submit an order consistent with the Trustee's standard sale order. The order shall be approved by the Trustee.

3. [21-23068](#)-B-13 SAUL/MARIA CABRALES CONTINUED OBJECTION TO  
[RDG](#)-1 Gregory J. Smith CONFIRMATION OF PLAN BY RUSSELL  
**Thru #5** D. GREER  
10-14-21 [[26](#)]

**Final Ruling**

This matter has been continued multiple times, most recently from December 14, 2021, because the parties stated that they were preparing to file a settlement agreement, amended proof of claim, and an order confirming plan.

On December 14, 2021, the parties were ordered to file the aforementioned documents or a status report by 5:00 p.m. on December 17, 2021. A Settlement Agreement and Release of All Claims was timely filed but it appears incomplete and unsigned. An amended proof of claim and order confirming plan were not filed.

The parties are ordered to submit the complete and signed settlement agreement, amended proof of claim, and order confirming plan no later than **5:00 p.m. on Thursday, December 30, 2021**. **If these documents are not timely filed the objection at dkt. 26, RDG-1, will be sustained without further hearing and the Debtors' plan will not be confirmed. If these documents are timely filed the objection at dkt. 26, RDG-1, will be overruled.**

The matter will issue an order.

4. [21-23068](#)-B-13 SAUL/MARIA CABRALES CONTINUED OBJECTION TO  
[APN](#)-1 Gregory J. Smith CONFIRMATION OF PLAN BY U.S.  
BANK NATIONAL ASSOCIATION  
10-12-21 [[19](#)]

**Final Ruling**

This matter has been continued multiple times, most recently from December 14, 2021, because the parties stated that they were preparing to file a settlement agreement, amended proof of claim, and an order confirming plan.

On December 14, 2021, the parties were ordered to file the aforementioned documents or a status report by 5:00 p.m. on December 17, 2021. A Settlement Agreement and Release of All Claims was timely filed but it appears incomplete and unsigned. An amended proof of claim and order confirming plan were not filed.

The parties are ordered to submit the complete and signed settlement agreement, amended proof of claim, and order confirming plan no later than **5:00 p.m. on Thursday, December 30, 2021**. **If these documents are not timely filed the objection at dkt. 19, APN-1, will be sustained without further hearing and the Debtors' plan will not be confirmed. If these documents are timely filed the objection at dkt. 19, APN-1, will be overruled.**

The matter will issue an order.

5. [21-23068](#)-B-13 SAUL/MARIA CABRALES CONTINUED OBJECTION TO CLAIM OF  
[JCK](#)-1 Gregory J. Smith U.S. BANK NATIONAL ASSOCIATION,  
CLAIM NUMBER 1  
10-5-21 [[15](#)]

**Final Ruling**

This matter has been continued multiple times, most recently from December 14, 2021, because the parties stated that they were preparing to file a settlement agreement,

amended proof of claim, and an order confirming plan.

On December 14, 2021, the parties were ordered to file the aforementioned documents or a status report by 5:00 p.m. on December 17, 2021. A Settlement Agreement and Release of All Claims was timely filed but it appears incomplete and unsigned. An amended proof of claim and order confirming plan were not filed.

The parties are ordered to submit the complete and signed settlement agreement, amended proof of claim, and order confirming plan no later than **5:00 p.m. on Thursday, December 30, 2021. If these documents are not timely filed the objection at dkt. 15, JCK-1, will be sustained without further hearing and the Debtors' plan will not be confirmed. If these documents are timely filed the objection at dkt. 15, JCK-1, will be overruled.**

The matter will issue an order.