

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, December 22, 2021
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

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. [21-11017](#)-A-13 **IN RE: DAVID/DIANE EBEL**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
11-2-2021 [\[58\]](#)

MICHAEL MEYER/MV
ALAN EIGHMEY/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted, with the case either dismissed or converted.

ORDER: The minutes of the hearing will be the court's findings
and conclusions. The Moving Party shall submit a proposed
order after the hearing.

This motion was set for hearing on at least 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtors filed written opposition to the motion to dismiss filed by the chapter 13 trustee ("Trustee") but failed to appear at the initial hearing held December 2, 2021. Order, Doc. #69. The court continued this matter to December 22, 2021, and ordered the debtors to submit documents requested by Trustee no later than December 16, 2021. Order, Doc. #69.

The court is inclined to GRANT this motion. Having reviewed the docket in this case, the court finds that Trustee has not withdrawn the motion to dismiss and there has been no supplemental filing indicating that the debtors have responded to the court's order. Neither the debtors nor the debtors' counsel appeared at the § 341 meeting held on December 7, 2021.

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 debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to cooperate with the chapter 13 trustee as required in 11 U.S.C. § 521(a).

Because the debtors' bankruptcy case was previously a chapter 7 case and there appears to be nonexempt property that could be liquidated to pay creditors, Trustee shall be prepared to discuss at the hearing why dismissal rather than conversion is in the best interests of creditors and the estate.

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
11-22-2021 [\[52\]](#)

GABRIEL WADDELL/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 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 movant has done here.

Fear Waddell P.C. ("Movant"), counsel for Gary Allen Fox and Jennifer Anne Fox (together, "Debtors"), the debtors in this chapter 13 case, requests allowance of interim compensation and reimbursement for expenses in the amount of \$5,227.85 for services rendered from May 21, 2020 through October 31, 2021. Doc. #52. Debtors' confirmed plan provides for \$12,000.00 in attorney's fees to be paid through the plan. Plan, Doc. ##2, 20. One prior fee application was granted authorizing interim compensation in the amount of \$4,868.15. Doc. #41.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) amending Debtors' schedules; (2) prosecuting multiple motions to avoid lien; (3) communicating with Debtors and general case administration; and (4) preparing the fee application. Exs., Doc. #54. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation and reimbursement for expenses in the amount of \$5,227.85 to be paid in a manner consistent with the terms of the confirmed plan.

MOTION TO AVOID LIEN OF SNIDER LEASING CORP.
11-16-2021 [\[16\]](#)

PEDRO GALLEGOS/MV
PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

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 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 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). Therefore, the defaults of the above-mentioned parties in interest are entered.

Pedro Moreno Gallegos ("Debtor"), the debtor in this chapter 13 case, moves pursuant to 11 U.S.C. § 522(f) to avoid the judicial lien of Snider Leasing Corp. ("Creditor") on the residential real property commonly referred to as 24239 Tropical Drive, Madera, CA 93638 (the "Property"). Doc. #16; Schedule C, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtor filed the bankruptcy petition on October 19, 2021. Doc. #1. A judgment was entered against Pedro Moreno Gallegos dba Gallegos Trucking in the amount of \$136,187.99 in favor of Creditor on September 23, 2020. Ex. D, Doc. #19. The abstract of judgment was recorded pre-petition in Madera County on November 13, 2020. Ex. D, Doc. #19. Debtor asserts the current amount owing on the judgment lien is \$146,187.99. Schedule D, Doc. #1; Doc. #18. The lien attached to Debtor's interest in the Property located in Madera County. Doc. #18. The Property also is encumbered by a lien in favor of Envoy Mortgage Ltd. in the amount \$96,186.00. Schedule D, Doc. #1. Debtor claimed an exemption of \$170,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$275,000. Schedule A/B, Doc. #1.

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Applying the statutory formula:

Amount of Creditor's judicial lien		\$146,187.99
Total amount of all other liens on the Property (excluding junior judicial liens)	+	96,186.00
Amount of Debtor's claim of exemption in the Property	+	170,000.00
		\$412,373.99
Value of Debtor's interest in the Property absent liens	-	275,000
Amount Creditor's lien impairs Debtors' exemption		\$137,373.99

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds that Creditor's lien can only be partially avoided. There is sufficient equity to support \$8,814 of Creditor's judicial lien. Therefore, the fixing of this judicial lien only partially impairs Debtor's exemption in the Property and Debtor has not satisfied the requirements of § 522(f)(1) to avoid Creditor's judicial lien in full as requested in the motion.

The court recognizes that under California Code of Civil Procedure § 704.730, Debtor may be entitled to a homestead exemption in an amount greater than the \$170,000 claimed, but those facts are not before the court.

Based on the evidence currently before the court, there is sufficient equity of \$8,814 to support Creditor's judicial lien. To the extent that Creditor's lien is greater than \$8,814, it impairs Debtor's exemptions and will be avoided.

4. [21-12384](#)-A-13 **IN RE: JOSEPH SMELTZER**
[CLB-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
11-22-2021 [[36](#)]

BANK OF AMERICA, N.A./MV
CHAD BUTLER/ATTY. FOR MV.

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

DISPOSITION: Continued to January 13, 2022, at 9:30 a.m.

ORDER: The court will issue an order.

The hearing on the objection to confirmation of plan will be continued to January 13, 2022 at 9:30 a.m. to be heard with the motion to confirm the plan.

5. [21-12384](#)-A-13 **IN RE: JOSEPH SMELTZER**
[MMJ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
11-15-2021 [\[24\]](#)

CAPITAL ONE AUTO FINANCE/MV
MARJORIE JOHNSON/ATTY. FOR MV.

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

DISPOSITION: Continued to January 13, 2022, at 9:30 a.m.

ORDER: The court will issue an order.

The hearing on the objection to confirmation of plan will be continued to January 13, 2022 at 9:30 a.m. to be heard with the motion to confirm the plan.

6. [21-12287](#)-A-13 **IN RE: RICARDO/MICHELE MARROQUIN**
[PBB-1](#)

MOTION TO CONFIRM PLAN
11-11-2021 [\[22\]](#)

MICHELE MARROQUIN/MV
PETER BUNTING/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.

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.

MOTION TO DISMISS CASE
11-19-2021 [\[29\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/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 Moving Party shall submit a proposed
order after the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtors timely filed written opposition on December 10, 2021. Doc. #33. 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). Therefore, the defaults of the non-responding parties in interest are entered.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because the debtors have failed to make all payments due under the proposed plan (11 U.S.C. § 1307(c)(4)). Doc. #29.

On December 10, 2021, the debtors submitted written opposition stating that they cannot afford to become current under the proposed plan. Doc. #33. The debtors represented that a modified plan would be filed prior to the December 22, 2021 hearing date. Doc. #33. A review of the docket shows that the debtors have not yet filed a modified plan.

Unless the trustee's motion to dismiss is withdrawn or a modified plan is filed prior to the date set for hearing, the court is inclined to GRANT the 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 and 11 U.S.C. § 1307(c)(4) for failing to timely make payments due under the proposed plan.

Because the debtors' schedules reveal almost no nonexempt assets, the court finds that dismissal, rather than conversion, is in the best interests of creditors and the estate.

Accordingly, this motion will be GRANTED. The case will be dismissed.