UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Guillermo Luis Calixtro, Debtor.	Case No.: 2:19-bk-19171-ER Chapter: 11 **MEMORANDUM OF DECISION DENYING MOTION FOR RECONSIDERATION** [No hearing required pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)]

Guillermo Luis Calixtro (the "Debtor") moves for reconsideration (the "Motion for Reconsideration")[1] of the *Order Denying Motion for Order Imposing a Stay or Continuing the Automatic Stay* [Doc. No. 36] (the "Order"). Pursuant to Civil Rule 78(b) and LBR 9013-1(j)(3),[2] the Court finds the Motion for Reconsideration to be suitable for disposition without oral argument. For the reasons set forth below, the Motion for Reconsideration is DENIED.

I. Background

On August 6, 2019, the Debtor filed a *pro se* voluntary Chapter 11 petition. On August 7, 2019, the Debtor filed a motion (the "Motion") seeking relief from the *in rem* provisions of a May 11, 2018 order lifting the automatic stay as to real property located at 19830 East Saddle

[1] *See* Motion for Reconsideration Under 9023 and 9024 [sic] of Order Denaying [sic] Motion in Individual Case for Order Imposing a Stay or Continue [sic] the Automatic Stay as the Court Deems Appropriate [Doc. No. 37].
[2] Unless otherwise indicated, all "Civil Rule" references are to the Federal Rules of Civil Procedure, Rules 1–86; all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all "Evidence Rule" references are to the Federal Rules of Evidence, Rules 101–1103; all "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532.

Ridge Lane, Walnut, CA 91789 (the "Property") that was entered in the Chapter 13 case of the Debtor's spouse. *See* Order Granting Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 52, Case No. 2:17-bk-17465-VZ] (the "RFS Order"). Debtor sought a hearing on shortened time on the Motion, citing a foreclosure sale of the Property set for August 15, 2019. On August 7, 2019, the Court set the Motion for hearing on September 3, 2019, but enjoined Bayview Loan Servicing, LLC ("Bayview"), the servicing agent that had obtained the RFS Order granting *in rem* relief, from exercising its remedies with respect to the Property pending further order of the Court.

On September 3, 2019, the Court conducted a hearing on the Motion. Prior to the hearing, the Court issued a tentative ruling (the "Tentative Ruling") indicating its intent to deny the Motion. The hearing was briefly adjourned to provide the Debtor an opportunity to review the Tentative Ruling. After hearing the Debtor's arguments in opposition to the Tentative Ruling, the Court ruled that it would maintain the Tentative Ruling and deny the Motion.

On September 9, 2019, the Court entered the Order, which denied the Motion and adopted the Tentative Ruling as the Court's final ruling [Doc. No. 31] (the "Final Ruling").

Debtor seeks reconsideration of the Order. In a declaration filed in support of the Motion for Reconsideration, Debtor testifies that he did not receive a copy of Bayview's opposition to the Motion (the "Opposition"). To rebut the Proof of Service of the Opposition—which reflects that the Opposition was served upon the Debtor by first-class mail—Debtor testifies that the neighborhood in which his mailbox is located is "a safe and quiet place" with "no criminal activity" and with "street cameras outside the Corner [sic] of Paramount Blvd. and 5th Street." Declaration Re: Deficient Proof of Service at ¶ 2. Debtor argues that the Order should be vacated to provide him an opportunity to respond to the arguments in the Opposition.

II. Findings and Conclusions

Debtor brings the Motion for Reconsideration under Civil Rule 59(e) and Civil Rule 60(b). Reconsideration under Civil Rule 59(e) is "an 'extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.'" *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (internal citation omitted). "'[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.' A Rule 59(e) motion may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (internal citation omitted). A motion for reconsideration may not be used "to rehash the same arguments made the first time or simply express an opinion that the court was wrong." *In re Greco*, 113 B.R. 658, 664 (D. Haw. 1990), *aff'd and remanded sub nom. Greco v. Troy Corp.*, 952 F.2d 406 (9th Cir. 1991); *see also In re Mannie*, 299 B.R. 603, 608 (Bankr. N.D. Cal. 2003) (internal citation omitted) ("A motion to reconsider should not be used 'to ask the court "to rethink what the court had already thought through—rightly or wrongly"—or to reiterate arguments previously raised.'").

Civil Rule 60(b) permits the Court to relieve a party from an order for "mistake, inadvertence, surprise, or excusable neglect" or for "any other reason that justifies relief." Civil Rule 60(b)(1), (6). As the Ninth Circuit has explained, Civil Rule 60(b)(6) "should be used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment. Accordingly, a party who moves for such relief must demonstrate both injury and circumstances beyond his control that prevented him from proceeding with ... the action in a proper fashion." *Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007) (internal citations and quotations omitted).

A. Debtor Has Failed to Establish that the Opposition Was Not Served Upon Him

"Under the 'mailbox rule,' 'upon proof that mail is properly addressed, stamped and deposited in an appropriate receptacle, it is presumed to have been received by the addressee in the ordinary course of the mails.'" *Hasso v. Mozsgai (In re La Sierra Fin. Servs., Inc.)*, 290 B.R. 718, 733 (B.A.P. 9th Cir. 2002) (internal citations omitted). "[T]he presumption created by the mailbox rule can be rebutted by specific evidence of nonreceipt …." *In re Todd*, 441 B.R. 647, 652 (Bankr. D. Ariz. 2011). However, a "bare declaration of non-receipt" is not sufficient to rebut the presumption. *In re Williams*, 185 B.R. 598, 600 (B.A.P. 9th Cir. 1995). Instead, the "presumption can only be overcome by clear and convincing evidence that the mailing was not, in fact, accomplished." *Moody v. Bucknum (In re Bucknum)*, 951 F.2d 204, 207 (9th Cir. 1991).

The Proof of Service of the Opposition indicates that the Opposition was mailed to the Debtor at the mailing address listed on his schedules. Therefore, the mailbox rule's presumption that the Debtor received the Opposition applies.

The only specific evidence that the Debtor has submitted to rebut the mailbox rule's presumption is the following declaration testimony:

> The location 10727 Paramount Blvd., Downey, CA 90241 [the Debtor's mailing address] is a safe and quiet place and there is no criminal activity. There are street cameras outside the Corner [sic] of Paramount Blvd. and 5th Street.

Declaration Re: Deficient Proof of Service [Doc. No. 37] at ¶ 2.

The Debtor's declaration does not contain evidence of nonreceipt that is sufficiently specific to rebut the mailbox rule's presumption. Evidence sufficient to rebut the presumption might consist of testimony that the Debtor or his neighbors frequently did not receive their mail; that mail in the neighborhood was periodically stolen; or that the post office sometimes delivered mail to the Debtor that should have been sent elsewhere. Here, the Debtor's testimony that his mailbox is located in a safe and quiet neighborhood free of criminal activity corroborates, rather than undermines, the mailbox rule's presumption of delivery. The testimony falls far short of the "clear and convincing evidence" needed to rebut the presumption. *Moody*, 951 F.2d at 207.

B. Reconsideration of the Order is Not Warranted Even if the Debtor Did Not Receive the Opposition

Even if the Debtor had not received the Opposition, reconsideration of the Order would not be warranted. The Court's Final Ruling (attached as Exhibit A and incorporated herein by reference) sets forth in detail the Court's reasons for denying the Motion. The Court found that the Debtor was not entitled to relief from the *in rem* provisions of the RFS Order because he had failed to make the requisite showing of "change circumstances" or "good cause" pursuant to § 362(d)(4).

Nothing within the Motion for Reconsideration even addresses any of the reasons for denial of the Motion set forth in the Final Ruling. The Debtor has pointed to no error of fact or law within the Final Ruling. As noted, reconsideration is "an 'extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.'" *Carroll*, 342 F.3d at 945. The Debtor falls woefully short of meeting this standard.

Nor has the Debtor shown that he is entitled to relief from the Order under Rule 60(b). At the very minimum, entitlement to such relief requires the Debtor to identify an error of fact or law within the Final Ruling. The Debtor has not done so.

III. Conclusion

Based upon the foregoing, the Motion for Reconsideration is DENIED. The Court will enter an order consistent with this Memorandum of Decision.

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Date: September 11, 2019

Ernest M Robles

Ernest M. Robles
United States Bankruptcy Judge

Exhibit A—Final Ruling

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2:19-19171 Guillermo Luis Calixtro **Chapter 11**

#4.00 HearingRE: [6] Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 19830 E Saddle Ridge Ln, Walnut CA 91789 .

Docket 6

Matter Notes:

9/3/2019

The tentative ruling will be the order.
Party to lodge order: Movant

The Court will prepare the order to show cause re dismissal/conversion.

POST PDF OF TENTATIVE RULING TO CIAO

Tentative Ruling:

8/28/2019

For the reasons set forth below, the Motion is DENIED.

Pleadings Filed and Reviewed:
1) Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate [Doc. No. 6] (the "Motion")
   a) Application for Order Setting Hearing on Shortened Notice [Doc. No. 7]
   b) Order Setting Hearing on Motion for Order Seeking Relief from *In Rem* Provisions of Order Granting Relief from the Automatic Stay Entered in Prior Case [Doc. No. 9]
2) Opposition to Debtor's Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate [Doc. No. 27] (the "Opposition")

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a) Request for Judicial Notice in Support of Opposition [Doc. No. 28]

I. Facts and Summary of Pleadings

Guillermo Luix Calixtro (the "Debtor") filed a *pro se* voluntary Chapter 11 petition on August 6, 2019. On August 7, 2019, the Debtor filed a motion seeking relief from the *in rem* provisions of a May 11, 2018 order lifting the automatic stay as to real property located at 19830 East Saddle Ridge Lane, Walnut, CA 91789 (the "Property") that was entered in the Chapter 13 case of the Debtor's spouse. *See* Order Granting Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 52, Case No. 2:17-bk-17465-VZ] (the "RFS Order"). Debtor sought a hearing on shortened time on the Motion, citing a foreclosure sale of the Property set for August 15, 2019. On August 7, 2019, the Court set the Motion for hearing on September 3, 2019, but enjoined Bayview Loan Servicing, LLC ("Bayview"), the servicing agent that had obtained the RFS Order granting *in rem* relief, from exercising its remedies with respect to the Property pending further order of the Court. Bayview opposes the Motion.

A. Background

On June 9, 2010, the Debtor and his spouse, Tina Calixtro (collectively, the "Debtors"), filed a voluntary Chapter 11 petition, Case No. 2:10-bk-33389-ER (the "First Bankruptcy"). **[Note 1]** On June 16, 2011, the Court entered an order confirming the Debtors' Chapter 11 Plan. Doc. No. 74, Case No. 2:10-bk-33389-ER (the "Confirmation Order"). The Plan provided for the Debtors to make monthly payments of $3,766.93, for a period of 312 months, on account of the indebtedness against the Property. Confirmation Order at 2–3.

On March 5, 2014, the Debtors filed a Postconfirmation Status Report [Doc. No. 97, Case No. 2:10-bk-33389-ER], which stated that the "Debtors are currently unemployed and have no wherewithal to fund their plan." Postconfirmation Status Report at ¶ 3. The Postconfirmation Status Report further stated that the Debtors did not oppose dismissal of the case. *Id.* at ¶ 6.

On March 24, 2014, the First Bankruptcy was dismissed upon the motion of the United States Trustee (the "UST"), based upon the Debtors' failure to remain current on quarterly UST fees. Doc. No. 100, Case No. 2:10-bk-33389-ER.

On December 13, 2016, the Debtor only filed a second voluntary Chapter 11 petition, Case No. 2:16-bk-26296-ER (the "Second Bankruptcy"). On April 20, 2017, upon the motion of the UST, the Court dismissed the Second Bankruptcy and imposed

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a 180-day bar to re-filing. Doc. No. 72, Case No. 2:16-bk-26296-ER. In dismissing the case, the Court found that the Debtor had failed to provide evidence of insurance coverage to the UST, and had routinely filed late or incomplete Monthly Operating Reports. The Court found that the Debtor's filing of incomplete Monthly Operating Reports prevented the UST from fulfilling its statutory obligation to ensure that debtors-in-possession are acting as fiduciaries for creditors. *See* Final Ruling Granting UST's Motion to Dismiss [Doc. No. 67, Case No. 2:16-bk-26296-ER].

On June 15, 2017, the Court denied the Debtor's motion to vacate the 180-day bar to re-filing. Doc. No. 90, Case No. 2:16-bk-26296-ER.

On June 20, 2017, the Debtor's spouse, Tina Calixtro ("Calixtro"), filed a Chapter 13 petition, Case No. 2:17-bk-17465-VZ (the "Spouse's Bankruptcy"). On May 11, 2018, Bayview obtained the RFS Order against the Property. The Court found that the filing of the bankruptcy petition was part of a scheme to hinder, delay, or defraud creditors that involved multiple bankruptcy cases affecting the Property. RFS Order at ¶ 3.d.2. The Court further found that the Debtor was involved in the fraudulent scheme. *Id.* at ¶ 3.d.3. On June 14, 2018, the Court denied Calixtro's motion for reconsideration of the RFS Order. Doc. No. 75, Case No. 2:17-bk-17465-VZ. On July 24, 2018, the Court dismissed Calixtro's Chapter 13 case. Doc. No. 79, Case No. 2:17-bk-17465-VZ.

B. Summary of the Motion

Debtor seeks relief from the *in rem* provisions of the RFS Order, and argues that such relief is warranted for the following reasons:

1) There is equity in the Property and the Debtor will continue to apply for a loan modification.
2) Debtor is working as a paralegal and now has monthly income of $7,500, which is sufficient income to successfully reorganize.
3) The *in rem* provisions of the RFS Order should not apply to the Debtor, because the RFS Order was entered in Calixtro's Chapter 13 case. Calixtro is not and has never been a borrower on the loan against the Property.

Debtor also seeks an order imposing the automatic stay as to Bayview and all creditors pursuant to § 362(c)(4).

C. Summary of Bayview's Opposition

Bayview makes the following arguments in Opposition to the Motion:

1) To the extent the Motion seeks relief under § 362(c)(4), it is procedurally improper. Section 362(c)(4) does not apply to the Debtor because the Debtor did not have two bankruptcy cases pending within the one year period prior to the filing of the instant case.
2) The RFS Order containing the *in rem* provisions was entered by Judge Zurzolo. To the extent the Debtor seeks relief from the *in rem* provisions of the RFS Order, he must obtain such relief from Judge Zurzolo.
3) Debtor has not shown good cause for relief from the *in rem* provisions of the RFS Order. The Motion effectively constitutes a motion for reconsideration under Civil Rule 60(b). The Debtor has failed to represent the changed circumstances that are a prerequisite to such relief. The Debtor is not represented by counsel in his Chapter 11 case, so the chances of him being able to successfully confirm a plan are slim. There is no merit to the Debtor's contention that his monthly income of $7,500 will enable him to successfully reorganize. In the Second Bankruptcy Case, the Debtor's monthly income was $8,150, yet the Debtor proved unable to reorganize. Bayview's claim against the Property is approximately $1.2 million. Assuming the Debtor confirmed a Chapter 11 Plan with an interest rate of 6.25%, the Debtor would be required to make monthly payments of $7,388.61 on the Property, excluding property taxes and insurance.

II. Findings and Conclusions

Section 362(c) limits the extent to which debtors who have been a party to one or more pending bankruptcy cases within the one year period prior to the filing of a subsequent case can receive the protections of the automatic stay in the subsequent case. Section 362(c)(3) applies to debtors who have been a party to one bankruptcy case pending within the one year period prior to the filing of the subsequent case. Section 362(c)(4) applies to debtors who have been a party to two or more cases pending within the one year period prior to the filing of the subsequent case.

The Second Bankruptcy Case filed by the Debtor was dismissed on April 20, 2017. Because the Second Bankruptcy Case was not pending within the one year period prior to the filing of the instant case, neither § 362(c)(3) or § 362(c)(4) apply. The only issue for the Court's consideration is whether the Debtor should be entitled to relief from the *in rem* provisions of the RFS Order.

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Section 362(d)(4) provides that the court may grant relief from the automatic stay as to real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." Section 362(d)(4) further provides that where properly recorded, any such order granting stay relief "shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or good cause shown, after notice and a hearing." Section 362(d)(4) was added to the Bankruptcy Code in 2005 as a new fourth ground for granting stay relief and was "'intended to reduce abusive filings.'" *Black v. HSBC Bank (In re Black)*, 514 B.R. 605, 612 (Bankr. E.D. Cal. 2014) (citing H.R. Rep. No. 109-31, pt. 1, at 70 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 138).

First, the Court rejects Bayview's contention that only Judge Zurzolo, who entered the RFS Order, can determine whether the Debtor is entitled to relief from the *in rem* provisions of that order. In *In re Black*, the court considered the application of the *in rem* provisions of a stay relief order that had been entered by a different bankruptcy court in determining whether a secured creditor had violated the automatic stay. *In re Black*, 514 B.R. at 607. It was not necessary for the *Black* court to refer the matter to the court that had entered the stay relief order. Similarly, this Court has the ability to determine whether the Debtor is entitled to relief from the RFS Order's *in rem* provisions "based upon changed circumstances or for good cause shown …."

Second, the Court rejects the Debtor's contention that the *in rem* provisions of the RFS Order should not apply to him simply because the RFS Order was entered in Calixtro's Chapter 13 case. Section 362(d)(4) relief applies "against not only the debtor, but also every non-debtor, co-owner, and subsequent owner of the property." *Alakozai v. Citizens Equity First Credit Union (In re Alakozai)*, 499 B.R. 698 (B.A.P. 9th Cir. 2013). Because § 362(d)(4) expressly contemplates that the relief it affords will apply against *any entity* asserting an interest in the property, the fact that the RFS Order was entered in Calixtro's Chapter 13 case, rather than a prior case filed by the Debtor, is not grounds for relief from the RFS Order's *in rem* provisions.

To be entitled to relief from the *in rem* provisions of the RFS Order, the Debtor must show "changed circumstances" or "good cause." § 362(d)(4). The Debtor has failed to make the requisite showing.

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Debtor's primary argument is that as a result of a job as a paralegal that he obtained on August 1, 2019, he now has the necessary income to fund a successful Chapter 11 Plan. According to the Debtor's *Statement of Financial Affairs* (the "SOFA"), he earned $30,000 in 2017; $34,500 in 2018; and $18,500 for the period from January 1, 2019 to August 6, 2019. SOFA [Doc. No. 26] at ¶ 4. According to the Debtor's *Schedule I: Your Income* [Doc. No. 26] ("Schedule I"), his monthly income is now $9,000, consisting of $5,000 in wages earned as a paralegal, $3,500 on account of a family contribution, and $500 for providing services as a notary.

The Debtor's declaration filed in support of the Motion (the "Debtor's Decl.") [Doc. No. 6] is not consistent with the Debtor's schedules. The Debtor's Decl. provides that he earns $7,500 per month as a paralegal, not $5,000 as set forth in the Debtor's schedules. Debtor's Decl. at ¶ 6. The Debtor's Decl. further provides that the Debtor is earning additional income as a licensed real estate agent. *Id.* The Debtor's Schedule I contains no mention of income earned as a real estate agent.

The "debtor has a duty to prepare schedules carefully, completely, and accurately." *In re Mohring*, 142 B.R. 389, 394 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994). Here, the Debtor's inability to provide the Court consistent information regarding basic details such as the amount of his monthly income casts serious doubt upon the Debtor's ability to successfully confirm a Chapter 11 plan. To successfully confirm a Chapter 11 plan, the Debtor must comply with numerous and highly technical requirements set forth in § 1129. The Debtor is attempting to achieve this process without the assistance of bankruptcy counsel.

The Motion contains further inaccuracies. The Debtors' Decl. states in bold type that "Tina Calixtro is not and never been [sic] on the LOAN for the property at 18930 E. Saddle Ridge Ln., Walnut, CA 91789." Debtor's Decl. at ¶ 6. This assertion is contradicted by the Deed of Trust against the Property, which defines the "Borrower[s]" as "Guillermo Calixtro and Tina Calixtro, Husband and Wife as Joint Tenants." Doc. No. 24, Ex. A.

The Debtor's inability to complete simple tasks, such as filing declarations containing accurate information and supplying the Court with consistent information regarding the basic details of his finances, shows that he will be unable complete the much more complex task of confirming a Chapter 11 plan.

The United States Trustee (the "UST") has filed a motion to convert the Debtor's case to Chapter 7, pursuant to § 1112(b), based upon the Debtor's failure to comply with UST reporting requirements. (The UST's motion is set for hearing on September

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24, 2019, at 10:00 a.m.) According to the UST, the Debtor has failed to furnish the following information:

1) Sufficient evidence of closing of all pre-petition bank accounts including:
   a) Closing bank statements; and/or
   b) Bank account information in the Chapter 11 compliance declaration.
2) Sufficient evidence of the opening and maintenance of three debtor-in-possession bank accounts (general, payroll, and tax), including a copy of the debtor-in-possession check for each account.
3) Sufficient evidence of current insurance coverage including:
   a) The declaration page for each policy; and/or
   b) Insurance information in the Chapter 11 Compliance declaration.
4) A projected cash flow statement for the first ninety days of operation under Chapter 11.
5) A Statement of Major Issues and Timetable Report.
6) Copies of two years of state and federal income tax returns and the most recent payroll and sales tax returns.

See generally Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon [Doc. No. 17] (the "§1112(b) Motion").

The UST further states that the Debtor has failed to pay quarterly fees since the filing of the petition. *Id.*

The Debtor's failure to comply with UST reporting requirements further demonstrates his inability to successfully reorganize. Local Bankruptcy Rule ("LBR") 2015-2(a)(1) provides: "The … debtor in possession … must timely provide the United States Trustee with financial, management and operational reports, and such other information requested by the United States Trustee pursuant to the *Guidelines and Requirements for Chapter 11 Debtors in Possession* as necessary to properly supervise the administration of a Chapter 11 case." Debtors are under a continuing obligation to comply with all requirements imposed by the UST. Failure to timely comply is grounds for dismissal. If debtors do not timely submit the required information, the UST cannot effectively carry out its oversight responsibilities under 28 U.S.C. §586. There is nothing in the statute that says that debtors may ignore their compliance obligations until receiving a warning from the UST. By commencing a Chapter 11 petition, the Debtor voluntarily accepted the responsibility of complying

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with all applicable laws and regulations, including reporting obligations imposed by the UST's office. If the Debtor cannot fulfill these basic reporting obligations, he will be unable to accomplish the much more difficult task of confirming a Chapter 11 plan.

In support of his contention that he has the ability to reorganize, the Debtor states that his monthly income is $9,000. A significant portion of this income—$3,500—consists of a family contribution. A plan funded by a significant family contribution may be feasible, but only where "evidence in support of the contribution is submitted." *In re Deutsch*, 529 B.R. 308, 312 (Bankr. C.D. Cal. 2015) **[Note 2]**. Further, "[r]eliance on contributions from family is disfavored, but not prohibited." *Id.*

Here, the Debtor has not submitted any evidence in connection with the Motion showing that he will consistently receive $3,500 in monthly income from family members. Without such income, the Debtor will not have the ability to reorganize. The Debtor's schedules provide that his monthly expenses are $8,474. Absent the anticipated family contribution, the Debtor's monthly income is only $5,500.

The Property has been the subject of two Chapter 11 cases and one Chapter 13 case during the past nine years. All these cases were dismissed. The Second Bankruptcy Case was dismissed with a 180-day bar against refiling. The Debtor has had multiple opportunities to reorganize. He has failed to demonstrate changed circumstances showing that his latest attempt to reorganize will be any more successful than the past failed attempts. The Debtor is not entitled to relief from the *in rem* provisions of the RFS Order.

By separate order, the Court will require the Debtor to appear and show cause why the instant Chapter 11 case should not be dismissed, pursuant to § 1112(b).

Based upon the foregoing, the Motion is DENIED.

Note 1

Prior to the First Bankruptcy, the Debtor sought bankruptcy protection on November 6, 1992, Case No. 92-bk-52728. Doc. No. 1, Form 101, Case No. 2:19-bk-19171-ER. The Debtor's schedules do not specify the chapter of the 1992 bankruptcy case.

Note 2

In re Deutsch addressed the feasibility of a Chapter 13 plan. Its holding applies here, since the feasibility requirement for a Chapter 11 plan propounded by an individual is comparable to the feasibility requirement for a Chapter 13 plan.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Guillermo Luis Calixtro Pro Se