

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, September 30, 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.

9:30 AM

1. [17-13307](#)-A-13 **IN RE: CRYSTAL HYATT**
[SAH-4](#)

MOTION OBJECTING TO LAKEVIEW LOAN SERVICING, LLC'S SUPPLEMENTAL
PROOF OF CLAIM FOR CARES FORBEARANCE CLAIM
8-12-2021 [\[114\]](#)

CRYSTAL HYATT/MV
SUSAN HEMB/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on August 18, 2021. Doc. #119.

2. [18-11307](#)-A-13 **IN RE: GUADALUPE ACOSTA**
[SL-2](#)

MOTION TO MODIFY PLAN
8-25-2021 [\[39\]](#)

GUADALUPE ACOSTA/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 at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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.

3. [19-11009](#)-A-13 **IN RE: KEVIN/TAMEKA BLUEBAUGH**
[DMG-7](#)

MOTION TO MODIFY PLAN
8-26-2021 [\[112\]](#)

TAMEKA BLUEBAUGH/MV
D. GARDNER/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)(2). 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.

4. [21-10852](#)-A-13 **IN RE: GUILLERMO/ELIZABETH CORTINA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
9-13-2021 [\[59\]](#)

DAVID JENKINS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained in part, overruled 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 objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain in part, and overrule in part, the objection. 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.

Guillermo Cortina III and Elizabeth Sylvia Cortina (together, "Debtors") filed their chapter 13 plan ("Plan") on June 21, 2021. Doc. #27. Michael H. Meyer ("Trustee"), the chapter 13 trustee, objects to confirmation of the Plan on the grounds that: (1) Debtors overstate certain expenses and therefore fail to provide for all disposable income to be applied to unsecured creditors pursuant to 11 U.S.C. § 1325(b); and (2) beginning in month 22, Debtors will have additional funds to pay unsecured creditors as the result of a loan maturing in month 21, and the monthly Plan payment should increase in month 22 to reflect that change. Doc. #59. The result of Trustee's objections is that unsecured creditors stand to receive approximately \$31,098, or a 28% dividend, as opposed to the 4% dividend proposed in the Plan. Doc. #59.

Debtors are above-median income debtors. See Form 122C-1, Doc. #31. Upon Trustee's objection to confirmation of the Plan, the Plan must provide for all projected disposable income to be received in the applicable commitment period be applied to make payments to unsecured creditors under the Plan. 11 U.S.C. § 1325(b)(1)(B). Trustee's objection states that Debtor's monthly disposable income under § 1325(b)(2) should be \$349.56, which equates to \$20,973.60 over 60 months. Absent opposition at the hearing, the court is inclined to SUSTAIN this objection.

Trustee also contends that that an additional \$259.60 per month will become available beginning in month 22 when Debtors repay a voluntary retirement loan. Trustee believes that amount should be paid to unsecured creditors and that the Plan payment should reflect an increase of \$259.60 beginning in month 22. However, this objection does not appear to be consistent with controlling Ninth Circuit authority. In Anderson v. Satterlee (In re Anderson), 21 F.3d 355 (9th Cir. 1994), the Ninth Circuit held that the debtors were required only to pay all *projected* disposable income over the life of the plan, and rejected the chapter 13 trustee's attempt to provide for automatic increases in plan payments should the debtors' income increase during the life of the plan. Anderson, 21 F.3d at 357-58 (emphasis added). The Ninth Circuit determined that "§ 1325(b)(1)(B) requires provision for 'payment of all projected disposable income' as calculated at the time of confirmation," and rejected the trustee's "attempt to impose a different, more burdensome requirement on the debtors' plan as a prerequisite to confirmation." Id. at 358 (quoting 11 U.S.C. § 1325(b)(1)(B)); see also 8 COLLIER ON BANKRUPTCY ¶ 1325.11[c][i] (Richard Levin & Henry J. Sommer eds., 16th ed.) (advising that "the anticipated conclusion of payments on a pension loan should not ordinarily be deemed to increase a debtor's disposable income, especially if it is more than a few months into the future"). Instead, "[s]ubsequent increases in actual income can be captured for creditors by way of a § 1329 plan modification[.]" Fridley v. Forsythe (In re Fridley), 380 B.R. 538, 542-43 (B.A.P. 9th Cir. 2007).

The court is inclined to OVERRULE this objection because the availability of funds to Debtors as the result of the repayment of a loan in month 21 of a 60-month plan is not part of projected disposable income under 11 U.S.C. § 1325(b)(1)(B). When the time comes, Trustee may seek modification of the Plan under § 1329.

Accordingly, pending any opposition at the hearing, the objection will be SUSTAINED in part and Debtors shall amend Form 122C-2 to reflect the changes to monthly disposable income addressed in Trustee's objection. The objection will be OVERRULED in part and Debtors will not be required, at this time, to increase Plan payments in month 22.

5. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE
[MHM-4](#)**

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-2-2021 [[203](#)]

MICHAEL MEYER/MV
RESPONSIVE PLEADING

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed an amended Schedule C on September 28, 2021 (Doc. #230).

6. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE
[SSA-3](#)**

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-2-2021 [[206](#)]

T2M INVESTMENTS LLC/MV
STEVEN ALTMAN/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed an amended Schedule C on September 28, 2021 (Doc. #230).

7. [17-14292](#)-A-13 **IN RE: JUAN MEDINA- HERRERA AND STEFANIEROSE
[NES-8](#) MEDINA**

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY(S)
8-20-2021 [[156](#)]

NEIL SCHWARTZ/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.

Neil E. Schwartz ("Movant"), counsel for Juan and Stephanie Medina ("Debtors"), the debtors in this chapter 13 case, requests allowance of final compensation in the amount of \$1,110.00 and reimbursement for expenses in the amount of \$10.00 for services rendered from March 1, 2021 through August 11, 2021. Doc. #156. Debtors' confirmed plan provides for \$20,000.00 in attorney's fees. Plan, Doc. #95. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of \$15,907.50. and reimbursement for expenses totaling \$393.00. Order, Doc. #155.

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) fee applications; (2) anticipated discharge filings; and (3) communicating with clients. Doc. #158. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on an interim basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim bases, in addition to compensation requested by this motion in the amount of \$1,110 and reimbursement for expenses in the amount of \$10 to be paid in a manner consistent with the terms of the confirmed plan.

11:00 AM

1. [21-11034](#)-A-7 **IN RE: ESPERANZA GONZALEZ**
[21-031](#)

STATUS CONFERENCE RE: COMPLAINT
7-26-2021 [\[1\]](#)

ABLP PROPERTIES VISALIA, LLC V. GONZALEZ
DON POOL/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 3, 2021, at 2:00 p.m.

ORDER: The court will issue an order.

Pursuant to the plaintiff's status conference statement filed on September 27, 2021 (Doc. #9), the status conference will be continued to November 3, 2021, at 2:00 p.m.

The parties shall file either joint or unilateral status report(s) not later than October 27, 2021.

2. [20-13451](#)-A-7 **IN RE: AMANDEEP SINGH**
[21-1004](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-5-2021 [\[1\]](#)

BMO HARRIS BANK, N.A. V. SINGH
RAFFI KHATCHADOURIAN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 16, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status conference statement filed on September 8, 2021 (Doc. #17), the status conference will be continued to December 16, 2021, at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than December 9, 2021.

3. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#)

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

NICOLE V. T2M INVESTMENTS, LLC
RESPONSIVE PLEADING

NO RULING.

4. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1023](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-26-2021 [[1](#)]

U.S. TRUSTEE V. NICOLE
JUSTIN VALENCIA/ATTY. FOR PL.

NO RULING.

5. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[17-1086](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
9-5-2018 [[131](#)]

KODIAK MINING & MINERALS II LLC ET AL V. DON ROSE OIL CO., INC.
VONN CHRISTENSON/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.