



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, January 30, 2025
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/CourtAppearances>. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

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. [24-13300](#)-A-13 **IN RE: MICHAEL/MIRIAM BIAS**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
1-6-2025 [\[31\]](#)

LILIAN TSANG/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This objection to confirmation is DENIED AS MOOT. The debtors filed a modified plan on January 24, 2025 (Doc. #39), with a motion to confirm the modified plan set for hearing on March 19, 2025 at 2:00 p.m. (PBB-2). Doc. ##37-43.

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form with respect to the objection to confirmation. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #33. However, Federal Rule of Bankruptcy Procedure ("Rule") 9014 requires service of an objection to confirmation of plan be made pursuant to Rule 7004, which was done. In Section 6, the declarant should have checked the appropriate box under Section 6A, not Section 6B.

2. [24-13300](#)-A-13 **IN RE: MICHAEL/MIRIAM BIAS**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF PACCAR FINANCIAL CORPORATION
12-26-2024 [\[26\]](#)

MIRIAM BIAS/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 28 days' notice prior to the hearing date 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). 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.

Michael Bias and Mirian Wanda Bias ("Debtors"), the debtors in this chapter 13 case, move the court for an order valuing Debtors' 2022 Kenworth T680 with APU (the "Vehicle"), which is the collateral of PACCAR Financial Corporation ("Creditor"). Doc. #26; Claim 9-1.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Pursuant to the attachments to Creditor's proof of claim filed on December 18, 2024, the Vehicle was purchased on September 29, 2021, which is more than 910 days before this bankruptcy case was filed on November 12, 2024. Doc. #1; Attachment 1 to Claim 9-1. Creditor's proof of claim asserts a secured claim of \$89,094.11. Claim 9-1. Debtors assert a replacement value of the Vehicle of \$82,150.00 and ask the court for an order valuing the Vehicle at \$82,150.00. Decl. of Michael Bias, Doc. #28. Because Creditor did not oppose the motion and Debtors are competent to testify as to the value of the Vehicle, the court accepts Debtors' valuation of the Vehicle.

The motion is GRANTED. Creditor's secured claim will be fixed at \$82,150.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

3. [24-13318](#)-A-13 **IN RE: ROBERT FLORES**
[KSH-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
12-26-2024 [\[18\]](#)

CAPITAL ONE AUTO FINANCE/MV
KRISTIN SCHULER-HINTZ/ATTY. FOR MV.

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

DISPOSITION: Continued to February 27, 2025 at 9:30 a.m.

ORDER: The court will issue an order.

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #21. However, Federal Rule of Bankruptcy Procedure ("Rule") 9014 requires service of an objection to confirmation of plan be made pursuant to Rule 7004, which was done. In Section 6, the declarant should have checked the appropriate box under Section 6A, not Section 6B.

Robert Flores ("Debtor") filed a voluntary petition under chapter 13 on November 14, 2024, and a chapter 13 plan ("Plan") on November 27, 2024. Doc. #1, 13. Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") objects to confirmation of the Plan on the ground that the Plan does not provide for payment of pre-petition arrears or an appropriate interest rate on Creditor's secured claim. Doc. #18. The Plan does not provide for or acknowledge Creditor's claim. Plan, Doc. #13; Doc. #18. Creditor contends that under the Supreme Court decision of Till v. SCS Credit Corp., 541 U.S. 465, 480 (2004), the interest rate should be at least 9.75%. Doc. #18.

This objection will be continued to February 27, 2025 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Creditor's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than February 13, 2025. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Creditor shall file and serve a reply, if any, by February 20, 2025.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 20, 2025. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be denied on the grounds stated in Creditor's opposition without a further hearing.

4. [24-13318-A-13](#) **IN RE: ROBERT FLORES**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
12-31-2024 [\[22\]](#)

LILIAN TSANG/MV

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

DISPOSITION: Continued to February 27, 2025 at 9:30 a.m.

ORDER: The court will issue an order.

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #24. However, Federal Rule of Bankruptcy Procedure ("Rule") 9014 requires service of an objection to confirmation of plan be made pursuant to Rule 7004, which was done. In Section 6, the declarant should have checked the appropriate box under Section 6A, not Section 6B.

Robert Flores ("Debtor") filed a voluntary petition under chapter 13 on November 14, 2024 and a chapter 13 plan ("Plan") on November 27, 2024. Doc. #1, 13. The chapter 13 trustee ("Trustee") objects to confirmation of the

Plan because the 341 meeting of creditors has not been concluded. Doc. #22. Debtor's 341 meeting of creditors has been continued to February 4, 2025 at 10:00 a.m. See court docket entry entered on December 30, 2024.

This objection will be continued to February 27, 2025 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than February 13, 2025. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Trustee shall file and serve a reply, if any, by February 20, 2025.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 20, 2025. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be denied on the grounds stated in Trustee's opposition without a further hearing.

5. [21-10126](#)-A-13 **IN RE: EDUARDO TAMAYO**
[LGT-1](#)

OBJECTION TO DISCHARGE BY LILIAN G. TSANG
12-12-2024 [\[48\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Trustee withdrew the objection to discharge on January 29, 2025. Doc. #52.

6. [24-13526](#)-A-13 **IN RE: JENNEL MARINE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-3-2025 [\[23\]](#)

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

This matter will proceed as scheduled. An amended creditor matrix (Doc. #17) was filed by the debtor on December 20, 2024, which added a creditor who was not listed on the previously filed creditor matrix. A fee of \$34.00 was required at the time of filing because the amended creditor matrix added a creditor. The fee was not paid. A notice of payment due was served on the debtor on December 28, 2024. Doc. #22.

If the filing fee of \$34.00 is not paid prior to the hearing, the amended creditor matrix (Doc. #17) may be stricken, and sanctions will be imposed on the debtor on the grounds stated in the order to show cause.

7. [24-13435](#)-A-13 **IN RE: TONY LUNA**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
1-3-2025 [\[17\]](#)

LILIAN TSANG/MV
JERRY LOWE/ATTY. FOR DBT.
WITHDRAWN 1/28/2025

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection to confirmation on January 28, 2025. Doc. #25.

8. [24-12953](#)-A-13 **IN RE: ROSA RAMIREZ**
[SDS-1](#)

AMENDED MOTION TO CONFIRM PLAN
12-11-2024 [\[24\]](#)

ROSA RAMIREZ/MV
SUSAN SILVEIRA/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN 1/24/25

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 chapter 13 trustee ("Trustee") timely opposed this motion but withdrew the opposition on January 24, 2025. Doc. #41. 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. 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). 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.

9. [24-13354](#)-A-13 **IN RE: MONICA BAEZA**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
1-6-2025 [\[19\]](#)

BENNY BARCO/ATTY. FOR DBT.
WITHDRAWN 1/28/2025

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection to confirmation on January 28, 2025. Doc. #23.

10. [20-10157](#)-A-13 **IN RE: CATALINA GARCIA**
[SLL-2](#)

MOTION FOR COMPENSATION FOR STEPHEN L LABIAK, DEBTORS ATTORNEY(S)
1-1-2025 [\[46\]](#)

STEPHEN LABIAK/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 prior to the hearing date 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). 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.

Stephen L. Labiak ("Movant"), counsel for Catalina Garcia ("Debtor"), the debtor in this chapter 13 case, requests allowance of final compensation in the amount of \$3,480.00 and reimbursement for expenses in the amount of \$189.20 for services rendered from March 11, 2020 through January 1, 2025. Doc. #46. Debtor's confirmed plan provides, in addition to \$300.00 paid prior to filing the case, for \$12,000.00 in attorney's fees. Plan, Doc. #2; Order, Doc. #31. One prior fee application has been submitted and granted for compensation in

the amount of \$5,940.00 and expenses in the amount of \$56.20. Order, Doc. #33. Debtor consents to the amount requested in Movant's application. Doc. #46.

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). 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) preparing petition, schedules and related pleadings; (2) preparing and filing original and modified plans; (3) preparing and attending 341 meeting of creditors; (4) general case administration; and (5) preparing fee application. Exs. B-D, Doc. #49. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final 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 basis. In addition, the court allows on a final basis compensation requested by this motion in the amount of \$3,480.00 and reimbursement for expenses in the amount of \$189.20 to be paid in a manner consistent with the terms of the confirmed plan.

11. [22-10973](#)-A-13 **IN RE: DANIEL NAKAHIRA**
[PLG-6](#)

MOTION TO MODIFY PLAN
12-18-2024 [\[110\]](#)

DANIEL NAKAHIRA/MV
RABIN POURNAZARIAN/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 prior to the hearing date pursuant to 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.

12. [24-12886](#)-A-13 **IN RE: HERSIE/EDNA STOVALL**
[AP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY J.P. JMORGAN MORTGAGE
ACQUISITION CORP.
11-26-2024 [[24](#)]

J.P. JMORGAN MORTGAGE ACQUISITION CORP./MV
RHONDA WALKER/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection to confirmation is OVERRULED AS MOOT. The debtor filed a first amended plan on January 23, 2025 (Plan, Doc. #37). No motion to confirm the first amended plan has been filed.

As an informative matter, Local Rule of Practice 3015-1(d)(1) requires the debtor to file and serve a motion to confirm the first amended plan along with supporting evidence and set the motion for hearing on at least 35 days' notice.

13. [24-12886](#)-A-13 **IN RE: HERSIE/EDNA STOVALL**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
11-20-2024 [[21](#)]

LILIAN TSANG/MV
RHONDA WALKER/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection to confirmation is OVERRULED AS MOOT. The debtor filed a first amended plan on January 23, 2025 (Plan, Doc. #37). No motion to confirm the first amended plan has been filed.

As an informative matter, Local Rule of Practice 3015-1(d)(1) requires the debtor to file and serve a motion to confirm the first amended plan along with supporting evidence and set the motion for hearing on at least 35 days' notice.

14. [24-13287](#)-A-13 **IN RE: JOHN/NANCY ALVA**
[SDN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-20-2024 [[12](#)]

FAMILIES AND SCHOOLS TOGETHER CREDIT UNION/MV
STEPHEN LABIAK/ATTY. FOR DBT.
SHERYL NOEL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

15. [24-10995](#)-A-13 **IN RE: VICTOR TORRES FIGUEROA AND YAMAYRA SANTIAGO LOYO**
[JRL-2](#)

CONTINUED MOTION TO CONFIRM PLAN
11-12-2024 [[65](#)]

YAMAYRA SANTIAGO LOYO/MV
JERRY LOWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

1. [22-10825](#)-A-7 **IN RE: JAMIE/MARIA GARCIA**
[22-1018](#) [PWG-2](#)

MOTION BY PHILLIP W. GILLET JR. TO WITHDRAW AS ATTORNEY
1-2-2025 [\[141\]](#)

AGRO LABOR SERVICES, INC. ET AL V. GARCIA ET AL
PHILLIP GILLET/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if service of this motion was proper and record
sufficiently supplemented.

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 pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). It is unclear whether the defendants were served by U.S. Mail with this motion. Attachment 6B2 to the certificate of service filed with this motion states that the parties listed were served via first class mail on October 17, 2024, which is when the prior motion that was denied for improper notice was served but does not show that Defendants were served by first class Mail with this motion. Doc. #145. Unless the defendants were served with this motion on January 2, 2025, notice of the motion on the defendants is not proper, and the motion will be denied without prejudice for improper service.

If the moving party can show service of this motion was proper, the failure of the defendants, 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. Because the court requires additional information before granting the motion, the matter will proceed as scheduled.

Philip W. Gillet, Jr. ("Movant"), counsel for defendants Adela Garcia, Jaime Rene Garcia and Maria Cruz Garcia (together, "Defendants"), the defendants in this consolidated adversary proceeding, moves to withdraw as Defendants' attorney of record in this adversary proceeding. Doc. #141. Movant's withdrawal will leave Defendants unrepresented by counsel.

LBR 2017-1(e) states that "an attorney who has appeared may not withdraw leaving the client *in propria persona* without leave of court upon noticed motion and notice to the client and all other parties who have appeared." The local rule goes on to require the attorney seeking withdrawal to "provide an affidavit stating the current or last known address" of the client and "the efforts made to notify the client of the motion to withdraw." LBR 2017-1(e).

Movant has not conformed with LBR 2017-1(e). Specifically, Movant's declaration does not provide the current or last known address of Defendants. Decl. of Philip W. Gillet, Jr., Doc. #144. The court requires Movant to file a supplemental declaration stating the current or last known address(es) for each of the Defendants before the motion will be granted.

Withdrawal is governed by the California Rules of Professional Conduct. LBR 2017-1(e). Pursuant to California Rules of Professional Conduct Rule 1.16, formerly Rule 3-700, a lawyer may withdraw from representing a client if the client breaches a material term of an agreement with the lawyer and the lawyer has given the client reasonable warning of withdrawal, if a continuation of the representation is likely to result in a violation of the rules, if the client renders it unreasonably difficult for the lawyer to carry out the representation effectively, or if other good cause for withdrawal exists. Rules Prof. Conduct 1.16(b), <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules>.

Movant submits that Defendants have not paid Movant since his retention on December 19, 2022. Gillet Decl., Doc. #144. Movant further states that Defendants have not responded to emails regarding unpaid fees for several months. Id. It appears that Movant has demonstrated cause for withdrawal.

Accordingly, assuming this motion was properly served by mail on Defendants and subject to Movant filing a supplemental declaration, this motion will be GRANTED.

2. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[19-1081](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-28-2019 [[1](#)]

DILDAY ET AL V. JONES
RILEY WALTER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued March 27, 2025 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status report filed on January 23, 2025 (Doc. #191), the status conference will be continued to March 27, 2025 at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than March 20, 2025.

3. [24-10440](#)-A-7 **IN RE: ZAC FANCHER**
[24-1013](#) [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
12-6-2024 [[90](#)]

FANCHER V. TULARE COUNTY RESOURCE MANAGEMENT AGENCY

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

DISPOSITION: Continued to February 13, 2025 at 11:00 a.m.

ORDER: The court will issue an order.

The status conference will be continued to February 13, 2025 at 11:00 a.m. to be heard in conjunction with the continued hearing on the defendant's motion to dismiss this adversary proceeding.

4. [24-10440](#)-A-7 **IN RE: ZAC FANCHER**
[24-1013](#) [CH-3](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
12-23-2024 [\[97\]](#)

FANCHER V. TULARE COUNTY RESOURCE MANAGEMENT AGENCY
DARRYL HOROWITT/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 13, 2025 at 11:00 a.m.

ORDER: The court will issue an order.

The hearing on the motion to dismiss is continued to February 13, 2025 at 11:00 a.m.

5. [17-13859](#)-A-7 **IN RE: KYLE PENNINGTON**
[17-1091](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-16-2017 [\[1\]](#)

MARTINEZ V. PENNINGTON
KEVIN LITTLE/ATTY. FOR PL.
RESPONSIVE PLEADING
DISMISSED 01/29/25

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on January 29, 2025. Doc. #114. Therefore, the status conference is dropped as moot.

6. [23-10963](#)-A-7 **IN RE: JESUS GUERRA**
[24-1033](#) [HDN-6](#)

STATUS CONFERENCE RE: MOTION FOR PRELIMINARY INJUNCTION
12-4-2024 [[45](#)]

GUERRA V. ADAMS ET AL
HENRY NUNEZ/ATTY. FOR MV.
OST 1/16/25

NO RULING.

7. [24-12566](#)-A-7 **IN RE: CALIFORNIA CITRUS MARKETING, INC.**
[24-1052](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
11-27-2024 [[1](#)]

CONTRERAS FARMS, LLC V. CALIFORNIA CITRUS MARKETING, INC.
MICHAEL LAMPE/ATTY. FOR PL.

NO RULING.

8. [11-18268](#)-A-7 **IN RE: GREGORY/ELIZABETH PETRINI**
[23-1045](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT
11-2-2023 [[1](#)]

PETRINI ET AL V. MB DUNCAN, INC
D. GARDNER/ATTY. FOR PL.

NO RULING.

9. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[23-1029](#) [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
11-20-2024 [[111](#)]

NICOLE V. LOS BANOS TRANSPORT & TOWING ET AL
RESPONSIVE PLEADING

NO RULING.

10. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[23-1029](#) [LBB-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
12-5-2024 [\[114\]](#)

NICOLE V. LOS BANOS TRANSPORT & TOWING ET AL
DANIELLE WELLER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied in part and granted without leave to amend in part.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The plaintiff timely filed written opposition on January 14, 2025. Doc. #119. The moving party filed a timely reply on January 22, 2025. Doc. #123. This matter will proceed as scheduled.

As a procedural matter, the notice of hearing and motion (Doc. #87) do not comply with LBR 9004-2(c)(1), which requires the notice of hearing and the motion be filed as separate documents. Here, the notice of hearing and motion were filed as a single document.

BACKGROUND

Sylvia Nicole ("Plaintiff") is a chapter 13 debtor pro se and the plaintiff in this adversary proceeding. On July 12, 2023, Plaintiff initiated this adversary proceeding against defendants AAA Insurance and Los Banos Transport & Towing. Doc. #1. On June 24, 2024, Plaintiff amended her complaint to initiate this adversary proceeding against American Automobile Association of Northern California, Nevada & Utah ("AAA") and Los Banos Transport & Towing (together with AAA, "Defendants"). Doc. #82.

On September 9, 2024, AAA filed a motion to dismiss Plaintiff's amended complaint. Doc. #87. Plaintiff opposed the motion to dismiss, and the court granted the motion with leave to amend. Doc. ##97, 103. On November 18, 2024, Plaintiff filed her second amended complaint ("Complaint"). Doc. #109. By the Complaint, Plaintiff asserts two claims for relief against AAA for breach of contract and fraud and a claim for relief against all Defendants for violation of the automatic stay.

The allegations in the Complaint stem from the alleged failure of AAA to provide roadside assistance to Plaintiff. Compl., Doc. #109. In the Complaint, Plaintiff asserts she had a roadside service contract with AAA that allows up to four service calls per year. Compl. at ¶¶ 4-10, Doc. #109. On July 6, 2023, Plaintiff alleges she contacted AAA to assist her in moving her 2003 Saturn SUV ("Vehicle") from where the Vehicle was parked inside the fenced backyard of Plaintiff's property to a new location. Compl. at ¶ 14, Doc. #109. AAA sent a technician with a truck to assist Plaintiff. Compl. at ¶ 15, Doc. #109. However, when Plaintiff showed the AAA technician a registration form with a one day moving permit, the AAA technician informed Plaintiff that AAA does not allow the technician to tow her Vehicle to Plaintiff's preferred location to

purchase a battery, but the Vehicle could be towed to an AAA location for the purchase of a new battery from AAA. Compl. at ¶ 16, Doc. #109.

Plaintiff asked the AAA technician if he could jump the Vehicle, but the AAA technician said "no." Compl. at ¶ 18, Doc. #109. Plaintiff then asked the AAA technician to assist in pushing the Vehicle out of the gate so Plaintiff could work on the Vehicle, which was done. Compl. at ¶¶ 19-20, Doc. #109. Plaintiff alleges that she again asked the AAA technician if he could jump start the Vehicle, but the AAA technician immediately left and drove away without saying anything and leaving the Vehicle blocking traffic. Compl. at ¶¶ 22-23, Doc. #109. When a call was placed about the Vehicle blocking traffic, the police contacted co-defendant Los Banos Transport & Tow to tow the Vehicle. Compl. at ¶ 26, Doc. #109.

On December 5, 2024, AAA moved to dismiss the three claims for relief against it under Federal Rule of Civil Procedure ("Rule") 12(b)(6). Doc. #114. Rule 12(b) is made applicable to this proceeding pursuant to Federal Rule of Bankruptcy Procedure 7012. On January 15, 2025, Plaintiff filed written opposition to AAA's motion to dismiss. Doc. #119. AAA replied to Plaintiff's opposition on January 22, 2025. Doc. #123.

Having considered the motion, opposition, reply and Complaint in its entirety, the court is inclined to DENY AAA's motion to dismiss as to the first two claims for relief and GRANT the motion without leave to amend as to the third claim for relief.

MOTION TO DISMISS

"A motion under Rule 12(b)(6) tests the formal sufficiency of the statement of the claim for relief." Greenstein v. Wells Fargo Bank, N.A. (In re Greenstein), 576 B.R. 139, 171 (Bankr. C.D. Cal. 2017). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)); Rule 8(a). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Iqbal, 556 U.S. at 679.

Rule 9(b) requires that "the circumstances constituting the alleged fraud 'be specific enough to give defendants notice of the particular misconduct . . . so that they can defend against the charge and not just deny that they have done anything wrong.'" Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003) (quoting Bly-Magee v. California, 236 F.3d 1014, 1019 (9th Cir. 2001)). While not identical, "[a] motion to dismiss a complaint or claim 'grounded in fraud' under Rule 9(b) for failure to plead with particularity is the functional equivalent of a motion to dismiss under Rule 12(b)(6) for failure to state a claim." Vess, 317 F.3d at 1107. Upon determining that "particular averments of fraud are insufficiently pled under Rule 9(b)," the bankruptcy court should disregard, or strip, those averments from the claim. Id. at 1105. "The court should then examine the allegations that remain to determine whether they state a claim" under "the ordinary pleading standards of Rule 8(a)." Id.

"As with Rule 12(b)(6) dismissals, dismissals for failure to comply with Rule 9(b) should ordinarily be without prejudice. Leave to amend should be granted if it appears at all possible that the plaintiff can correct the defect." Vess, 317 F.3d at 1108 (citing Balistreri v. Pacifica Police Dep't, 901 F.2d 696 (9th Cir. 1990)) (internal quotation marks omitted). The Ninth Circuit has consistently held that "leave to amend should be granted unless the [trial] court determines that the pleading could not possibly be cured by the allegation of other facts." Bly-Magee, 236 F.3d at 1019 (quotations and

citations omitted). "This approach is required by Federal Rule of Civil Procedure 15(a) which provides that leave to amend should be freely granted 'when justice so requires.'" Id.

"[A] pro se litigant is not excused from knowing the most basic pleading requirements." Am. Ass'n of Naturopathic Physicians v. Hayhurst, 227 F.3d 1104, 1107-08 (9th Cir. 2000). "[I]n applying the foregoing standards [for ruling on 12(b)(6) motions] enunciated by the Supreme Court, a federal court must construe a pro se complaint liberally, and hold it to less stringent standards than pleadings drafted by lawyers." Greenstein, 576 B.R. at 171 (citing Hebbe v. Pliler, 611 F.3d 1202, 1205 (9th Cir. 2010)).

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994) (citations omitted). When matters outside the complaint are presented to and not excluded by the court, a Rule 12(b)(6) motion is to be treated as one for summary judgment. Id.; Rule 12(d). However, "a document is not 'outside' the complaint if the complaint specifically refers to the document and if its authenticity is not questioned." Id. (quoting Townsend v. Columbia Operations, 667 F.2d 844, 848-49 (9th Cir. 1982)). "[D]ocuments whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss" without converting the motion into a motion for summary judgment. Branch, 14 F.3d at 454.

BREACH OF CONTRACT

The elements of a claim for relief for breach of contract are: (1) the existence of the contract; (2) performance by the plaintiff or excuse for nonperformance; (3) breach by the defendant; and (4) damages. First Com. Mortg. Co. v. Reece, 89 Cal. App. 4th 731, 745 (2001).

AAA asserts that "the terms of the contract must be set out verbatim in the complaint or a copy of the written instrument must be attached and incorporated by reference[,]" citing Orworth v. Southern Pacific Transportation Co., 166 Cal. App. 3d 452, 459 (1985). Opp., Doc. #115. Because Plaintiff fails to describe the verbatim details of an alleged oral contract with AAA, AAA asserts that this claim for relief does not comply with California Code of Civil Procedure § 430.10(e). Id. Plaintiff also states that the breach of contract claim for relief should be dismissed because Plaintiff did not allege whether Plaintiff performed under the alleged contract or whether her performance was excused. Id.

Under federal pleading standards, to survive a motion to dismiss, a complaint need only contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. Moreover, a federal court must construe a pro se complaint liberally and hold it to less stringent standards than pleadings drafted by lawyers.

Here, the Complaint identifies an agreement to purchase roadside assistance from AAA. While not stated directly, Plaintiff pleads sufficient facts alleging that Plaintiff performed under the contract between Plaintiff and AAA. The Complaint further alleges breaches by AAA of the contract between Plaintiff and AAA when: (a) AAA forced Plaintiff to buy its products in order to obtain roadside service; and (b) AAA failed to tow the Vehicle and, with assistance from the AAA technician, the Vehicle was left in the middle of the road. Finally, Plaintiff alleges that she was damaged as a direct and proximate result of the breach of contract by AAA.

The court finds the Complaint alleges sufficient facts to support a claim for relief for breach of contract against AAA that is plausible on its face under federal pleading standards to survive a motion to dismiss under Rule 12(b)(6). The motion to dismiss the first claim for relief is denied.

FRAUD CLAIM

"Fraud can be averred by specifically alleging fraud, or by alleging facts that necessarily constitute fraud (even if the word 'fraud' is not used)." Vess, 317 F.3d at 1105. Under California law, "[t]he elements of fraud are: (1) a misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (or scienter); (3) intent to defraud, i.e., induce reliance; (4) justifiable reliance; and (5) resulting damage." Robinson Helicopter Co., Inc. v. Dana Corp., 34 Cal. 4th 979, 990 (2004). "In order to satisfy these requirements, the plaintiff must 'actually [rely] on the alleged misrepresentations.'" Greenstein, 576 B.R. at 174 (quoting Conroy v. Regents of Univ. of Cal., 45 Cal. 4th 1244, 1256 (2009)) (internal punctuation omitted).

AAA asserts that Plaintiff has failed to plead any actionable misrepresentation or fraud by AAA and makes only conclusory allegations devoid of fact and fails to meet the heightened pleading standard required for a claim for relief for fraud. Opp., Doc. #115.

Under federal pleading standards, to survive a motion to dismiss, a complaint need only contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. Moreover, a federal court must construe a pro se complaint liberally and hold it to less stringent standards than pleadings drafted by lawyers.

Here, the Complaint identifies two instances of alleged fraud by AAA to Plaintiff. The first occurs in June 2023 when Plaintiff purchased coverage from AAA based on representations made to Plaintiff by a representative of AAA. Compl. at ¶¶ 3-11, 49-53, Doc. #109. Based on the alleged representations by AAA's agent, Plaintiff purchased coverage from AAA that was not provided. Id. The Complaint further alleges that on July 7, 2023, an agent for AAA agreed that the AAA technician was at fault for leaving the Vehicle and Plaintiff in a dangerous situation on July 6, 2023 and had caused the Vehicle to be towed. Compl. at ¶¶ 28-31, Doc. #109. The AAA agent then promised to have AAA pay for the tow and the storage fees of the Vehicle as soon as possible. Compl. at ¶ 31, Doc. #109. However, the promise was false, and AAA has not taken any action to stop further damage to Plaintiff. Compl. at ¶¶ 32, 46-48, Doc. #109.

The court finds the Complaint alleges sufficient facts to support a claim for relief for fraud against AAA that is plausible on its face under federal pleading standards to survive a motion to dismiss under Rule 12(b)(6). The motion to dismiss the second claim for relief is denied.

VIOLATION OF THE AUTOMATIC STAY

"A party seeking damages for violation of the automatic stay must prove by a preponderance of the evidence that: (1) a bankruptcy petition was filed; (2) the debtor is an individual; (3) the creditor received notice of the petition; (4) the creditor's actions were in willful violation of the stay; and (5) the debtor suffered damages." In re Jha, 461 B.R. 611, 616 (Bankr. N.D. Cal. 2011).

Here, a review of the creditor matrices filed in Plaintiff's bankruptcy case do not include AAA. Case No. 21-10679, Doc. #1, 132, 352. In addition, based on the allegations, AAA did not know about the automatic stay when the AAA technician took actions with respect to the Vehicle on July 6, 2023. Compl. at

¶¶ 15-23, 28, Doc. #109. Further, there are no allegations that AAA held possession of the Vehicle in violation of the automatic stay. In fact, the allegations state that the AAA technician left the Vehicle before the Vehicle was towed from in front of Plaintiff's property.

Because the Complaint does not allege sufficient facts to support a possible claim for relief for violation of the automatic stay against AAA that is plausible on its face and because Plaintiff previously has been granted leave to amend her complaint to assert such facts and has failed to do so in the Complaint, AAA's motion to dismiss the third claim for relief is granted without leave to amend. The third claim for relief as to AAA is DISMISSED WITHOUT LEAVE TO AMEND.

CONCLUSION

For the above reasons, the court DENIES AAA's motion to dismiss the first and second claims for relief against AAA. The court GRANTS AAA's motion to dismiss without leave to amend as to the third claim for relief.

Accordingly, the third claim for relief is DISMISSED WITHOUT LEAVE TO AMEND as to AAA. AAA shall file and serve an answer to the first two claims for relief not later than February 13, 2025.

11. [24-10680](#)-A-7 **IN RE: CENTRAL CALIFORNIA CARTAGE CO, INC**
[24-1030](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
9-12-2024 [[1](#)]

EDMONDS V. XTRA LEASE LLC
ANTHONY JOHNSTON/ATTY. FOR PL.
DISMISSED 01/13/25

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on January 13, 2025. Doc. #16. Therefore, the status conference is dropped as moot.

12. [24-10680](#)-A-7 **IN RE: CENTRAL CALIFORNIA CARTAGE CO, INC**
[24-1053](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
12-2-2024 [[1](#)]

EDMONDS V. RYDER TRUCK RENTAL, INC.
ANTHONY JOHNSTON/ATTY. FOR PL.

NO RULING.

13. [24-10680](#)-A-7 **IN RE: CENTRAL CALIFORNIA CARTAGE CO, INC**
[24-1054](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
12-2-2024 [[1](#)]

EDMONDS V. THE GOODYEAR TIRE & RUBBER COMPANY, INC.
ANTHONY JOHNSTON/ATTY. FOR PL.

NO RULING.

14. [24-10680](#)-A-7 **IN RE: CENTRAL CALIFORNIA CARTAGE CO, INC**
[24-1055](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
12-2-2024 [[1](#)]

EDMONDS V. VALLEY PACIFIC PETROLEUM SERVICES, INC.
ANTHONY JOHNSTON/ATTY. FOR PL.

NO RULING.

15. [23-10963](#)-A-7 **IN RE: JESUS GUERRA**
[24-1033](#) [HDN-6](#)

CONTINUED MOTION TO CONTINUE HEARING
1-15-2025 [[69](#)]

GUERRA V. ADAMS ET AL
UNKNOWN TIME OF FILING/ATTY. FOR MV.

NO RULING.