



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
HONORABLE RENÉ LASTRETO II  
Department B – Courtroom #13  
Fresno, California**

**Hearing Date: Wednesday, January 31, 2024**

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (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.

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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## 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.

**Post-Publication Changes:** 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 any possible updates.

9:30 AM

1. [23-12210](#)-B-13     **IN RE: ROBERT/LUCY GARIBAY**  
[RAS-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK,  
NATIONAL ASSOCIATION  
11-21-2023    [\[33\]](#)

U.S. BANK NATIONAL  
ASSOCIATION/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
FANNY WAN/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Overruled.

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

U.S. Bank National Association ("Creditor") objects to confirmation  
of the *Chapter 13 Plan* filed by Robert and Lucy Garibay  
(collectively "Debtors") on October 2, 2023, under 11 U.S.C.  
§ 1322(b) (5) on the following basis:

Debtor's Plan fails to provide for any outstanding  
arrears on Secured Creditor's pre-petition claim. Secured  
Creditor has filed its Proof of Claim, and Creditor's  
claim states pre-petition arrears in the amount of  
\$439.23. Debtor's Plan fails to meet the requirements of  
section 1325(a) (1) because it does not provide to  
promptly cure the entire outstanding balance of  
Creditor's arrearage claim as required by section  
1322(b) (5) .

Doc. #33. The plan lists Creditor (under the name PHH Mortgage  
Services) in Class 4.Doc. #3. On December 13, 2024, the court  
continued this matter to January 10, 2024, and directed  
Debtors to either file a written response to the objection  
within 14 days prior to the hearing date, which Debtors timely  
did. Doc. #47.

In their Response, Debtors argue that the basis of the  
objection is that Creditor did not receive their October  
mortgage payment prior to the filing of the petition, and,  
furthermore, Debtors have made all subsequent payments but  
they have not been properly applied to Debtors' account,  
leading to an arrearage. *Id.* Debtors suggest that this can be  
resolved by an order from the court allowing Creditor to  
accept payments and credit Debtors' account. *Id.*  
Alternatively, Debtors are willing to move Creditor to Class  
One and pay Creditor through the plan, but in that case,  
Debtors request that the court order Creditor to return all

funds paid by the Creditors to the Chapter 13 Trustee so that Creditor may properly receive 60 monthly payments through the plan to ensure its timely completion. *Id.*

On January 10, 2024, the court conducted a hearing on this matter during which the Creditor requested a brief continuance to allow it time to review its books and confirm that the Debtors' were current in their payments. The court continued this matter to January 31, 2024, at 9:30 a.m. and recommended that Creditor withdraw this motion if it could not produce any evidence of a delinquency in Debtors' payments. As of this writing, no such withdrawal has been entered. Accordingly, this matter will be called as scheduled.

The court is inclined to OVERRULE this objection. Leaving Creditor in Class 4 means that upon confirmation, there will be no automatic stay if there is a default. If the Debtors want to modify the Plan, then they should file, serve, and seek confirmation of a modified Plan. The Debtors' suggestion that the court order a refund of monthly payments is improper in this context.

2. [23-12028](#)-B-13     **IN RE: JACQUELINE KEENEY**  
[KLG-2](#)

MOTION TO CONFIRM PLAN  
12-19-2023    [\[51\]](#)

JACQUELINE KEENEY/MV  
ARETE KOSTOPOULOS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:        Continued to February 28, 2024, at 9:30 a.m.

ORDER:                The court will issue an order.

Jacqueline Sue Kenney ("Debtor") moves for an order confirming the *Second Amended Chapter 13 Plan* dated December 19, 2023. Docs. ##51, 53.

Chapter 13 trustee Lilian G. Tsang ("Trustee") timely objected to confirmation of the plan on the following grounds:

1. **11 U.S.C. § 1325(a)(6)**: The plan payments are delinquent \$298.89 through December 2023. The plan is also not feasible because the monthly plan payment exceeds Debtor's monthly net income as listed on Debtor's Schedule J.

This motion to confirm plan will be CONTINUED to **February 28, 2024, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or all objections to confirmation are withdrawn, the Debtor shall file and serve a written response to the objections no later than **fourteen (14) days** before the continued hearing date. The

response shall specifically address each issue raised in the objection(s) to confirmation, state whether each issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee shall file and serve a reply, if any, no later than **seven (7) days** prior to the hearing date.

If the Debtor elects to withdraw the 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 **seven (7) days** before the continued hearing date. If the Debtor does not timely file a modified plan or a written response, the objection will be sustained on the grounds stated, and the motion will be denied without further hearing.

3. [24-10045](#)-B-13     **IN RE: JAMES/REYNA SALAS**  
[JDR-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
1-12-2024    [\[11\]](#)

REYNA SALAS/MV  
JEFFREY ROWE/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Granted.

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

James and Reyna Salas ("Debtors") request an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #11.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay under subsection (a) shall terminate with respect to the debtor on the 30th day after the latter case is filed.

Debtors had one case pending within the preceding one-year period that was dismissed: Case No. 23-10243-F-13 ("the 2023 case"). The 2023 case was filed on February 10, 2023, and was dismissed on January 9, 2024. See *In re Salas I*, 23-10243, Docs. ##1, 58. At the

time the motion for voluntary dismissal was made, the Debtors were already facing a motion from the Chapter 13 Trustee for failure to make all payments due under the confirmed chapter 13 plan. *Salas I*, Doc. #47. The current case was filed on January 9, 2024. Doc. #1. The automatic stay will expire on February 8, 2024.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed. Such request must be made within 30 days of the petition date. Under 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc), a debtor's failure to "perform the terms of a plan confirmed by the court" (as happened in the 2023 case) raises a rebuttable presumption that the latter case was not filed in good faith. This presumption also arises under 11 U.S.C. § 362(c)(3)(C)(i)(III) if "there has not been a substantial change in the personal affairs of the debtor since the dismissal of the next most previous case."

The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" Factual contentions are highly probable if the evidence offered in support of them "instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition." *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by *Taggart v. Lorenzen*, 139 S. Ct. 1785 (2019)).

In this case, the presumption of bad faith arises because of the dismissal of the 2023 case within one year of the filing of the current case, and to rebut the presumption, the Debtors must show by clear and convincing evidence that the current case was filed in good faith and that there has been a substantial change in the Debtor's personal affairs since dismissal of the 2023 case.

Debtors present two *Declarations* as evidence of good faith and that there has been a substantial change in their personal affairs. Docs. ##13, 14. Mr. Salas declares that the Debtors inability to cure plan payments in the prior case was the result of his December 27, 2023, salary payment being incomplete and short by \$900.00 which left him unable to make the full December 25, 2023 plan payment. Doc. #13. The business office of his employer was closed over the Christmas and New Years holidays, and he was unable to correct the error before January 8, 2024. *Id.*

Mrs. Salas filed a separate Declaration confirming the information supplied by Mr. Salas' Declaration and adding that the initial plan payment deficiency was the result of confusion over how TFS would work because of Debtors' switching banks. Doc. #14. She also declares that the November missed payment was the result of an unexpectedly high PG&E bill in November resulting from the Debtors taking temporary custody of their two grandchildren. *Id.* This also resulted in a significant but temporary increase in their food

expenses. *Id.* The grandchildren have since moved in with their father, and Debtors anticipate that their food and energy expenses will return to their former affordable level. *Id.* Finally, Mrs. Salas notes that the Schedule J filed with the current plan demonstrates that the Debtor's disposable income is sufficient to fund the plan and pay 100% to unsecured creditors (as opposed to the 32.92% dividend under the 2023 plan).

The *Chapter 13 Plan* dated January 9, 2024, provides for 60 monthly payments of \$4,168.87 with a 100% dividend to unsecured claims. Doc. #3. Debtor's *Schedules I and J* indicate that Debtor receives \$8,148.00 in monthly net income, which is for Debtor to afford the proposed plan payment. Doc. #1. In the 2023 case, Debtors reported a monthly net income of \$4,009.00 on their most recent Schedule J, so Debtors financial condition has materially changed since the last case was filed. See, Bankr. Case No. 23-10243, Doc. #24.

Based on the moving papers and the record, the presumption appears to have been rebutted by clear and convincing evidence because Debtor's financial condition and circumstances have materially changed. Debtor's petition appears to have been filed in good faith and the proposed plan does appear to be feasible.

This matter will be called and proceed as scheduled. In the absence of opposition at the hearing, this motion may be GRANTED. 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).

4. [23-12268](#)-B-13     **IN RE: GREGORY GIANNOCCARO**  
[DAB-1](#)

MOTION TO CONFIRM PLAN  
12-19-2023    [\[28\]](#)

GREGORY GIANNOCCARO/MV  
DAVID BOONE/ATTY. FOR DBT.  
DISMISSED 12/21/23

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

On December 21, 2023, this case was dismissed. Accordingly, this *Motion to Confirm Plan* is hereby DENIED AS MOOT.

5. [19-10708](#)-B-13     **IN RE: ANTONIO/MARTHA AVILES**  
[TMO-5](#)

MOTION FOR A STAY OF BANKRUPTCY PROCEEDINGS UNTIL THE  
DECISION OF THE BANKRUPTCY APPELLATE PANEL IS RENDERED  
1-24-2024    [[184](#)]

MARTHA AVILES/MV  
T. O'TOOLE/ATTY. FOR DBT.  
T. O'TOOLE/ATTY. FOR MV.  
OST 1/25/24

NO RULING.



11:00 AM

1. [23-11154](#)-B-7     **IN RE: MATTHEW BOTWRIGHT**  
[23-1035](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT  
9-14-2023     [[10](#)]

BOTWRIGHT V. UNITED STATES  
DEPARTMENT OF EDUCATION  
JEFFREY ROWE/ATTY. FOR PL.

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

DISPOSITION:                    Continued to April 10, 2024, at 11:00 a.m.

ORDER:                            The Court will issue the order.

Plaintiff filed a status report on January 22, 2024. The court has reviewed the report. The remaining Defendant, U.S. Department of Education, is reviewing Plaintiff's application for discharge. Plaintiff surmises that a decision will be made in 60 days.

Accordingly, this matter is continued to April 10, 2024, at 11:00 a.m. Plaintiff to file and serve a status report seven days before the continued hearing.

2. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[23-1030](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
7-20-2023     [[1](#)]

MADERA COMMUNITY HOSPITAL V.  
UNITED STATES DEPARTMENT OF  
RILEY WALTER/ATTY. FOR PL.  
CONT'D TO 2/28/24 PER ECF STIP AND ORDER #21

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

DISPOSITION:                    Continued to February 28, 2024, at 11:00 a.m.

No order is required.

On December 21, 2023, this court entered an order approving the Stipulation of the parties that the hearing in this matter set for January 31, 2024, be continued to February 28, 2024, at 11:00 a.m. Accordingly, this matter is continued.