



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, February 2, 2023
Department A – Courtroom #11
Fresno, California**

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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.

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. [22-12053](#)-A-13 **IN RE: NICHOLAS/MISTY CARRILLO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
1-13-2023 [\[24\]](#)

PETER BUNTING/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 is OVERRULED AS MOOT. The debtors withdrew the chapter 13 plan on January 24, 2023. Doc. #38. A motion to confirm the first modified plan was filed and set for hearing on March 2, 2023, at 9:30 a.m. Doc. ##31-37.

2. [22-11666](#)-A-13 **IN RE: LAWRENCE CHANG**
[SLL-1](#)

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS ATTORNEY(S)
1-2-2023 [\[27\]](#)

LAWRENCE CHANG/MV
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 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 Lawrence Chang ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$8,295.00 and reimbursement for expenses in the amount of \$22.50 for services rendered from September 16, 2022 through December 20, 2022. Doc. #27.

Debtor's confirmed plan provides for \$10,000.00 in attorney's fees to be paid through the plan. Plan, Doc. #3. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Decl. of Lawrence Chang, Doc. #29.

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) preparing and prosecuting Debtor's plan; (2) drafting response to objection by creditor; (3) preparing and sending 341 meeting documents to trustee; (4) preparing the fee application; and (5) general case administration. Exs. B & C, Doc. #31. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$8,295.00 and reimbursement for expenses in the amount of \$22.50 to be paid in a manner consistent with the terms of the confirmed plan.

3. [22-12071](#)-A-13 **IN RE: ROBERT GARIBAY**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
1-13-2023 [\[16\]](#)

TIMOTHY SPRINGER/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 is OVERRULED AS MOOT. The debtor filed a first modified plan on January 26, 2023 (TCS-1, Doc. #24), with a motion to confirm the modified plan set for hearing on March 2, 2023 at 9:30 a.m. Doc. ##22-28.

As an informative matter, the certificate of service filed in connection with the objection to confirmation (Doc. #20) was filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) instead of being printed prior to filing with the court. The version that was filed with the court can be altered because it is still the fillable version. In the future, the declarant should print the completed certificate of service form prior to filing it with the court and not file the fillable version.

4. [22-10973](#)-A-13 **IN RE: DANIEL NAKAHIRA**
[PLG-2](#)

MOTION TO MODIFY PLAN
12-21-2022 [\[36\]](#)

DANIEL NAKAHIRA/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

5. [22-11875](#)-A-13 **IN RE: MATTHEW CRIPPEN**
[MHM-1](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-2-2022 [\[11\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

The court is granting the trustee's Motion to Dismiss [MHM-2] below, therefore this Objection to Debtor's Claim of Exemptions [MHM-1] will be OVERRULED AS MOOT.

6. [22-11875](#)-A-13 **IN RE: MATTHEW CRIPPEN**
[MHM-2](#)

MOTION TO DISMISS CASE
1-3-2023 [\[14\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor 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 default of the debtor is 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and for debtor's failure to attend the meeting of creditors. Doc. #14. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to (a) appear at the scheduled § 341 meeting of creditors, and (b) provide Trustee with any requested documents. In addition, the debtor is ineligible to be a debtor in a Chapter 13 because no counseling certificate has been filed with the court. Finally, while Trustee does not assert that the debtor filed this bankruptcy case in bad faith, Trustee believes that the filing may lack good faith. At the time of filing of the instant case, the debtor also had an open and pending Chapter 13 case in the Eastern District of California, bearing Case No. 22-10760. Doc. #14. The debtor did not file written opposition to the motion.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4).

Because the debtor has an open and pending Chapter 13 case, dismissal rather than conversion is appropriate.

Accordingly, the motion will be GRANTED, and the case dismissed.

7. [21-12879](#)-A-13 **IN RE: RICHARD/MARLENE THOMAS**
[TCS-1](#)

MOTION TO APPROVE LOAN MODIFICATION
1-3-2023 [\[22\]](#)

MARLENE THOMAS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if an amended certificate of service is filed on or before February 1, 2023 at 4:00 P.M.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the

U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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.

As a procedural matter, the amended certificate of service filed in connection with this motion (Doc. #28) shows that all creditors in interest were served notice by mail pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004. However, the movant should have served notice to creditors of this motion under Rule 5 and Rules 7005, 9036 Service. Further, the movant did not complete Section 5 of the certificate of service (Doc. #26), so the court does not know who was served the documents listed in Section 4. While it appears that service of the motion was proper, the court will hear the matter only if an amended certificate of service showing proper service of the motion is filed with the court by February 1, 2023 at 4:00 p.m.

Richard Thomas and Marlene Thomas (collectively "Debtors"), the chapter 13 debtors in this case, move the court for an order authorizing Debtors to modify their existing mortgage. Doc. #22. Debtors seek to modify the mortgage on their primary residence located at 42762 Road 415 Coarsegold, CA 93614 ("Residence"). Id. The modification will capitalize the arrearage and change the total due on the mortgage to \$154,585.17 as of November 2022 and the interest rate will be 4.375% resulting in a payment of \$907.03 for 40 years. Decl. of Richard Thomas, Doc. #24. After the modification, Debtors will be fully current on their loan. Id. Debtors will make all of their mortgage payments in class 4 under their plan. Motion, Doc. #22. The monthly payment will not exceed \$2,000 and will be paid outside of Debtors' chapter 13 plan. Thomas Decl. at ¶ 10 & ¶ 13.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

Notwithstanding Section 5 of the certificate of service (Doc. #26), it appears that motion was served and noticed properly, and no timely written opposition was filed. There is no indication that Debtors are not current on their chapter 13 plan payments or that the chapter 13 plan is in default. Debtors' Schedules I and J demonstrate an ability to pay future plan payments, projected living expenses, and the modified debt. The modified debt is a single loan incurred only to modify the existing debt encumbering Debtors' Residence. The only security for the modification will be Debtors' Residence.

Accordingly, the court is inclined to GRANT this motion if an amended certificate of service showing proper service of the motion is filed with the court by February 1, 2023 at 4:00 p.m. Debtors are authorized, but not required, to modify the existing mortgage in a manner consistent with the motion.

MOTION TO DISMISS CASE
1-5-2023 [\[26\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor 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 default of the debtor is 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor Costel Constantin Fuiorea ("Debtor") that is prejudicial to creditors. Doc. #26. Specifically, Trustee asks the court to dismiss this case for Debtor's failure to (a) appear at the scheduled § 341 meeting of creditors, and (b) provide Trustee with any requested documents. In addition, Debtor is ineligible to be a debtor in a Chapter 13 because no counseling certificate has been filed with the court. On page 6 of Debtor's bankruptcy petition, Debtor indicates that he is disabled. However, Debtor has failed to file a motion for waiver of credit counseling with the court as stated in the petition. Doc. #26. Debtor did not file written opposition to the motion.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by Debtor that is prejudicial to creditors because Debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4).

Under 11 U.S.C. § 109(h), an individual may not be a debtor unless the debtor received credit counseling within the 180-day period ending on the petition date. 11 U.S.C. § 109(h)(1). Debtor filed for relief under chapter 13 of the Bankruptcy Code on November 4, 2022. Doc. #1. The Bankruptcy Code allows the

debtor to request a waiver of the § 109(h)(1) requirement to receive credit counseling pre-petition based on exigent circumstances. 11 U.S.C. § 109(h)(3)(A). The Bankruptcy Code also allows the court to waive the § 109(h)(1) requirement to receive credit counseling pre-petition based on incapacity, disability, or active military duty in a military combat zone but only after notice and a hearing. 11 U.S.C. § 109(h)(4). Debtor has not requested a waiver of the § 109(h)(1) requirements and, because Debtor did not receive credit counseling prior to filing his bankruptcy petition and has not received a waiver of that requirement, Debtor may not be a debtor pursuant to § 109(h).

Because Debtor has failed to appear at the meeting of creditors and failed to obtain pre-petition credit counseling or timely seek waiver of that requirement, dismissal rather than conversion is appropriate.

Accordingly, the motion will be GRANTED, and the case dismissed.

9. [22-12098](#)-A-13 **IN RE: CURTIS HEMMAN**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-21-2022 [\[8\]](#)

MICHAEL MEYER/MV
PETER BUNTING/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 is OVERRULED AS MOOT. The debtor filed an amended Schedule C on December 23, 2022, amending the claimed exemption in the checking and savings #2004 accounts. Doc. #11.

10. [20-12069](#)-A-13 **IN RE: SCOTT/SARINA DUTEY**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
12-23-2022 [\[110\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on January 31, 2023. Doc. #120.

11. [22-10777](#)-A-13 **IN RE: STEVENS/CONSTANCE RYAN**
[MHM-5](#)

CONTINUED MOTION TO DISMISS CASE
12-23-2022 [[90](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

1. [22-10826](#)-A-13 **IN RE: CHRISTOPHER RENNA**
[22-1016](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-11-2022 [[1](#)]

LIMA V. RENNA
HENRY NUNEZ/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

At the hearing, the parties should be prepared to explain to the court why the parties did not file and serve either joint or unilateral status report(s) not later than January 26, 2023 as required by the court's order filed on December 2, 2022. Doc. #21.

2. [20-11147](#)-A-7 **IN RE: MARTIN LEON-MORALES AND MA ELENA MALDONADO-RAMIREZ**
[20-1040](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [[1](#)]

DE CASTAING ET AL V. MALDONADO-RAMIREZ ET AL
ROBERT RODRIGUEZ/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

No settlement was filed by January 26, 2023. At the hearing, the plaintiffs should be prepared to explain to the court why the plaintiffs did not file and serve a status report not later than January 26, 2023 as required by the court's order filed on December 5, 2022. Doc. #84.

3. [22-11499](#)-A-7 **IN RE: STEVEN HARO**
[22-1026](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
12-2-2022 [[1](#)]

HIGH BAND CONSTRUCTION INC. V. HARO ET AL
BRENT MEYER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.