



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B - Courtroom #13
Fresno, California**

Hearing Date: Wednesday, February 28, 2024

Unless otherwise ordered, all matters before the Honorable René Lastreto II shall be simultaneously: (1) **In Person** at, 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 or stated below.

All parties or their attorneys 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/RemoteAppearances>. Each party/attorney 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 and their attorneys who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest and/or their attorneys 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 who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

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.

9:30 AM

1. [23-12624](#)-B-13 **IN RE: NICASIO/DORINA SARABIA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-1-2024 [[34](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.
\$234.00 FILING FEE PAID 2/9/24

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the \$234.00 filing fee was paid on February 9, 2024. Accordingly, this order to show cause will be VACATED.

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

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

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

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

DISPOSITION: Granted.

ORDER: The movant shall submit the order after it is signed by the Trustee.

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

The Chapter 13 trustee ("Trustee") timely objected to confirmation of the plan but subsequently withdrew the objection. Docs. ##65, 74.

The 60-month plan proposes the following terms:

1. Debtor's plan payment will be \$574.36 per month.
2. Outstanding Attorney's fees in the amount of \$7,039.00 to be paid through the plan pursuant to LBR 2016-1(c).
3. Secured creditors to be sorted into appropriate Classes and paid as follows:
 - a. Golden 1 Credit Union (Class 2A, Non-PMSI loan against a 2013 Chevrolet Equinox). \$2,832.88 at 6.34% to be paid at \$55.22 per month.
 - b. Shellpoint Mortgage Servicing (Class 4, Mortgage on 2310 R. St. Merced, CA). \$1,988.63 to be paid directly by Debtor.
4. A dividend of 100% to unsecured creditors.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the chapter 13 trustee, 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). The Trustee filed an objection but later withdrew the objection. 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and reference the plan by the date it was filed.

3. [23-11439](#)-B-13 **IN RE: FELIX/IRENE MONTIEL**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
12-7-2023 [\[33\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

On February 7, 2024, the court continued this matter to February 28, 2024, to be heard in conjunction with the Debtor's *Motion to Confirm First Modified Chapter 13 Plan* dated December 20, 2023. Docs. ##37, 59. The court has granted the *Motion to Confirm*. See *Item #4, below*. Accordingly, the instant motion is DENIED as moot.

4. [23-11439](#)-B-13 **IN RE: FELIX/IRENE MONTIEL**
[RSW-1](#)

CONTINUED MOTION TO CONFIRM PLAN
12-20-2023 [[37](#)]

IRENE MONTIEL/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN,

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.

Felix and Irene Montiel ("Debtor") seek an order confirming the Debtor's *First Modified Chapter 13 Plan* dated December 20, 2023. Doc. #37. No plan has been confirmed so far. The 59-month plan proposes the following terms:

1. Debtors' aggregate payment through December 2023 will be \$5,000.00. Debtors' payments from January 2024 until plan completion will be \$2,000.00 per month.
2. Outstanding Attorney's fees in the amount of \$3,400.00 to be paid through the plan.
3. Secured creditors to be sorted into appropriate Classes and paid as follows:
 - a. Select Portfolio Servicing (Class 1, Mortgage). Arrears in the amount of \$23,952.33 at 0.00% to be paid at \$443.57 per month. Post-petition payments are \$1,264.26 per month.
4. A dividend of 0% to unsecured creditors.

Doc. #41. The Chapter 13 Trustee filed an objection to confirmation but subsequently withdrew it. Docs. ##49, 56. No other party timely filed any objections.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and reference the plan by the date it was filed.

5. [19-11859](#)-B-13 **IN RE: JOSHUA BOVARD**
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
1-30-2024 [[94](#)]

PETER FEAR/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

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.

Fear Waddell, P.C. ("Applicant"), attorney for Joshua Bovard ("Debtor"), requests final compensation in the sum of \$3,434.49 under 11 U.S.C. § 330. Doc. #94. This amount consists of \$3,296.50 in fees and \$137.99 in expenses from November 1, 2021, through January 17, 2024. *Id.* Applicant also requests that the fees and costs previously approved on an interim basis be approved on a final basis. *Id. Id.* Debtor executed a statement of consent dated January 23, 2024, indicating that Debtor has read the fee application and approves the same. Doc. #96, *Exhibit E*.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 13 trustee, 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 amounts of damages). *Televideo Sys. Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

No party in interest timely filed written opposition. This motion will be GRANTED.

Section 3.05 of the *Chapter 13 Plan* dated July 6, 2020, confirmed October 2, 2020, indicates that Applicant was paid \$1,500.00 prior to filing the case and, subject to court approval, additional fees of \$26,000.00 shall be paid through the plan upon court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Docs. ##54, 71.

This is Applicant's third and final fee application. Doc. #94. Applicant's prior interim fee awards were as follows:

Date	Fees Allowed	Costs Allowed
March 11, 2020. Doc. #49	\$13,134.50	\$458.39
December 15, 2021. Doc. #78	\$6,174.00	\$229.26
Total	\$18,308.50	\$687.64

Applicant's firm provided **12.1** billable hours at the following rates, totaling **\$3,296.50** in fees:

Professional	Rate	Billed	Total
Gabriel J. Waddell (2022)	\$345.00	3.30	\$1,138.50
Gabriel J. Waddell (2023)	\$360.00	1.50	\$540.00
Gabriel J. Waddell (2024)	\$380.00	0.20	\$76.00
Gabriel J. Waddell (2024-estimated time)	\$380.00	2.50	\$950.00
Kayla Schlaak (2022)	\$110.00	1.20	\$132.00
Kayla Schlaak (2023)	\$110.00	1.20	\$126.00
Kayla Schlaak (2024)	\$160.00	1.90	\$304.00
Laurel Guenther (2022)	\$100.00	0.30	\$30.00
Total		12.1	\$3,296.50

Docs. ##94, 96. Applicant also incurred **\$137.99** in expenses:

Photocopying	\$83.35
Postage	\$54.64
Total	\$137.99

Id. These combined fees and expenses total **\$4,332.93**. The total award sought is **\$3,434.49**. The total of this award plus the two prior interim awards is **\$22,430.63**, which is within the \$26,000.00 cap on attorney's fees called for by the Chapter 13 plan.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services during this period included, without limitation: work on Debtor's Second Modified Plan, plus motions and objections regarding same; motions to dismiss; fee application; and discharge and case closing. Doc. #96 The court finds these services and expenses reasonable, actual, and necessary.

Accordingly, this motion will be GRANTED. Applicant shall be awarded \$3,296.50 in fees and \$137.99 for actual, necessary expenses on a final basis under 11 U.S.C. § 330 for a total award of \$3,434.49 for the period extending from November 24, 2020, through December 31, 2023. Additionally, the court will approve on a final basis the two interim fee and expense awards granted on an interim basis on March 11, 2020, and December 15, 2021. The total fees paid to Applicant in this case will be **\$22,430.63**.

6. [24-10160](#)-B-13 **IN RE: MARIO OJEDA**
[LGT-1](#)

MOTION TO DISMISS CASE
1-30-2024 [[10](#)]

LILIAN TSANG/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

The Chapter 13 trustee in the above-styled case ("Trustee") asks the court to dismiss this case under 11 U.S.C. §§ 329 and 1307 with a bar for future filings for a minimum of two years and assessing sanctions for future filings on the grounds that Mario Ojeda ("Debtor") is a serial filer and that this case was filed in bad faith. Doc. #10. This is the tenth petition filed by Debtor since 2018, and all his prior cases were filed as "bare bones" petitions and dismissed prior to confirmation. *Id.* The instant case was also filed as a "bare bones" petition with no schedules, credit counseling certificate, or plan filed thus far, and the February 7, 2024, deadline set by the court's *Notice of Incomplete Filing and Notice of Intent to Dismiss* for curing those delinquencies has run without response from Debtor. *See Doc. #8, Docket general.*

Debtor did not oppose this motion. 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 creditors, the Debtor, 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Trustee has submitted a Declaration outlining Debtor's past filings and their dispositions. Doc. #12. It appears that since 2018, Debtor has filed for bankruptcy in nine prior cases: : 18-10180 (Ch. 13), 18-10650 (Ch. 7), 18-12624 (Ch. 13), 18-14150 (Ch. 13), 19-13543 (Ch. 13), 19-14958 (Ch. 13), 21-11894 (Ch. 13), 23-12837 (Ch. 13), and 24-10032 (Ch. 7). *Id.* All those cases were filed *pro se*, as was the instant case, and all nine of the prior cases were dismissed prior to plan confirmation (or even the filing of a plan) for failure to timely file documents and/or failure to pay filing fees. *Id.* The instant case is ripe for dismissal for the same reasons. *See Doc. #8.*

Generally, dismissals of individual bankruptcy cases are governed by § 349 and § 109(g) of the Code. Section 349 states that dismissal of a bankruptcy does not "prejudice the debtor with regard to filing of a subsequent petition under this title, except as provided in section 109(g)." 11 U.S.C. § 349(a). Section 109(g) bars individuals from being debtors under the Code who have, within the preceding 180 days, had a prior case dismissed "for willful failure of the debtor to abide by orders of the court or to appear before the court in proper prosecution of the case." 11 U.S.C. § 109(g). Viewed in tandem, these Code provisions state the general proposition that a court may only impose a 180-day bar on refiling by a debtor after dismissing the debtor's case with a finding of willful failure to abide by the court's orders, which certainly seems to be the case here.

However, § 349 also implicitly empowers the court, *for cause*, to order the dismissal of a case and to impose a bar on the filing of any subsequent petition for periods longer than 180 days, or even permanently. *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1223 (9th Cir. 1999) (*superceded on other grounds as recognized by In re Burkes*, Nos. 21-23813-rmb, 22-20431-rmb, 2023 Bankr. LEXIS 2401, at *17 (Bankr. E.D. Wis. Sep. 29, 2023). See also *In re Duran v. Rojas*, 630 B.R. 797 (B.A.P. 9th Cir. 2021).

As the *Leavitt* court noted, the Code does not specifically define "cause" in the context of bankruptcy dismissal. *Leavitt*, 171 F.3d at 1224. However, the Ninth Circuit went on to note that "bad faith" is a "cause" for dismissal under § 1307(c), and the court reasoned that "bad faith based on egregious behavior can justify dismissal with prejudice." *Id.* To reach such justification, *Leavitt* continues, a bankruptcy court should consider "the totality of the circumstances," taking into account the following factors: (1) whether the debtor "misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner"; (2) the debtor's history of filings and dismissals"; (3) whether "the debtor only intended to defeat state court litigation"; and (4) whether egregious behavior is present. *Id.* (citations omitted).

"[T]he court is not obligated to count the four *Leavitt* factors as though they present some sort of a box-score but rather is to consider them all and weigh them in judging the 'totality of the circumstances.'" *In re Lehr*, 479 B.R. 90, 98 (Bankr. N.D. Cal. 2012). The court considers the *Leavitt* factors under the "preponderance of the evidence" standard. *In re Dores*, 2017 Bankr. LEXIS 1539, at *14 (Bankr. E.D. Cal. June 7, 2017).

Here, Debtor's history of filings and dismissal clearly demonstrate an unfair manipulation of the Bankruptcy Code. Prior to the instant case, Debtor has filed for either chapter 7 or chapter 13 *nine* times in just six years. In each case, the Debtor filed a "bare bones" petition and ignored the ensuing *Notice of Incomplete Filing*, leading inevitably to the dismissal of the case. Thus, the first and second *Leavitt* factors support a finding of bad faith.

It is impossible to say one way or the other whether Debtor's goal is to defeat any pending state court litigation because Debtor's obstinate refusal to provide any documentation of his financial affairs beyond the petition itself gives the court no information upon which to base such a determination. However, the court finds it suggestive that in two (and *only* two) of his prior nine cases, Debtor's petition was accompanied by a *Verification and Master Address List* which purported to identify his creditors, though each only listed one or two such creditors with no indication of the nature of the underlying debts. See Case No. 18-10650, Doc. #4 and Case No. 19-14958, Doc. #4.

And in both of those cases, creditors, upon receiving proper notice of the case, filed motions for relief from stay as to property owned by the Debtor. See Case No. 18-10650, Doc. #15 (*Motion for Relief from Stay* filed by Creditor Bank of New York Mellon) and Case No. 19-14958, Doc. #14 (*Motion for Relief from Stay* filed by Creditor U.S. Bank Trust National Association). In both instances, the bankruptcy case was dismissed before those motions for stay relief could be heard on the merits, but the fact that they were even filed in the only two cases where creditors received proper notice of the bankruptcy filing suggests that thwarting state court recovery actions may well have been a motivating factor in the Debtor's actions.

Finally, the court must consider whether Debtor's conduct is "egregious" and has little reservation about making such a finding. By way of comparison, the court in *Davis v. Brest-Taylor* applied the *Leavitt* factors and found the debtor's conduct egregious in part because of "[t]he sheer numerosity of filings." 572 B.R. 750, 756 (Bankr. E.D. Cal. 2017). In that case, the debtor had filed six bankruptcies within the preceding eight years, all of which had been dismissed for failure to file documents, make payments, or perform other obligations under the Bankruptcy Code. *Davis*, 572 B.R. at 756. The Debtor in the instant case has filed even more bankruptcies within a shorter span of time, and the court has little difficulty in finding such conduct to be egregious.

Based on the foregoing analysis, the *Leavitt* factors clearly militate towards a finding of bad faith under § 349 on the part of this Debtor that is sufficient to justify the requested two-year bar against refiling. Accordingly, it is hereby ordered that:

1. This motion is GRANTED.
2. This Chapter 13 case will be DISMISSED FOR CAUSE AND WITH PREJUDICE.
3. Debtor Mario Ojeda is hereby barred from filing a bankruptcy petition without leave of the court for a period of two (2) years from the entry of this order.
4. Leave of court shall be obtained by Debtor Mario Ojeda attaching to a future bankruptcy petition, while this order is effective, a declaration under oath stating his specific reasons for filing the petition and this order. The petition, declaration, and this order shall be presented to the Chief Judge of the United States Bankruptcy Court for the Eastern District of California. Said petition shall be filed only if permitted by the Chief Bankruptcy Judge.
5. Any bankruptcy case filed in violation of this order by Debtor shall be deemed null and void and dismissed without notice to Debtor.
6. If Debtor violates this Order by filing a bankruptcy petition within the two (2) years following the entry of this order without permission from the court, the court will issue an order to show cause why further sanctions including compensatory and coercive monetary sanctions should not be awarded against Debtor.

7. [21-10061](#)-B-13 **IN RE: JACINTO/KAREN FRONTERAS**
[GEG-7](#)

MOTION TO MODIFY PLAN
1-8-2024 [\[196\]](#)

KAREN FRONTERAS/MV
GLEN GATES/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn.

ORDER: The court will issue an order.

On February 21, 2024, Jacinto and Karen Fronteras ("Debtors") filed their *Third Modified Chapter 13 Plan* accompanied by a withdrawal of the plan that is the subject of the instant motion. Accordingly, this motion is WITHDRAWN.

8. [24-10188](#)-B-13 **IN RE: SOCORRO LOPEZ**
[LGT-1](#)

MOTION TO DISMISS CASE
1-30-2024 [\[9\]](#)

LILIAN TSANG/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

The Chapter 13 trustee in the above-styled case ("Trustee") asks the court to dismiss this case under 11 U.S.C. §§ 329 and 1307 with a bar for future filings for a minimum of two years and assessing sanctions for future filings on the grounds that Socorro Macias Lopez ("Debtor") is a serial filer and that this case was filed in bad faith. Doc. #9. This is the eleventh petition filed by Debtor since 2018, and all her prior cases were filed as "bare bones" petitions and dismissed prior to confirmation. *Id.* The instant case was also filed as a "bare bones" petition with no schedules, credit counseling certificate, or plan filed thus far, and the February 12, 2024, deadline set by the court's *Notice of Incomplete Filing and Notice of Intent to Dismiss* for curing those delinquencies has run without response from Debtor. *See Doc. #13, Docket generally.*

Debtor did not oppose this motion. 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 creditors, the Debtor, 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Trustee has submitted a Declaration outlining Debtor's past filings and their dispositions. Doc. #11. It appears that since 2018, Debtor has filed for bankruptcy in ten prior cases: 18-14585 (Chapter 13), 18-15103 (Chapter 13), 20-10873 (Chapter 13), 22-10847 (Chapter 7), 22-11229 (Chapter 13), 22-12004 (Chapter 13), 23-10171 (Chapter 13), 23-11293 (Chapter 13), 23-11880 (Chapter 13), and 23-12438 (Chapter 13). *Id.* All those cases were filed *pro se*, as was the instant case, and all ten of the prior cases were dismissed prior to plan confirmation (or even the filing of a plan) for failure to timely file documents and/or failure to pay filing fees. *Id.* The instant case is ripe for dismissal for the same reasons. See Doc. #13.

Generally, dismissals of individual bankruptcy cases are governed by § 349 and § 109(g) of the Code. Section 349 states that dismissal of a bankruptcy does not "prejudice the debtor with regard to filing of a subsequent petition under this title, except as provided in section 109(g)." 11 U.S.C. § 349(a). Section 109(g) bars individuals from being debtors under the Code who have, within the preceding 180 days, had a prior case dismissed "for willful failure of the debtor to abide by orders of the court or to appear before the court in proper prosecution of the case." 11 U.S.C. § 109(g). Viewed in tandem, these Code provisions state the general proposition that a court may only impose a 180-day bar on refile by a debtor after dismissing the debtor's case with a finding of willful failure to abide by the court's orders, which certainly seems to be the case here.

However, § 349 also implicitly empowers the court, *for cause*, to order the dismissal of a case and to impose a bar on the filing of any subsequent petition for periods longer than 180 days, or even permanently. *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1223 (9th Cir. 1999) (*superceded on other grounds as recognized by In re Burkes*, Nos. 21-23813-rmb, 22-20431-rmb, 2023 Bankr. LEXIS 2401, at *17 (Bankr. E.D. Wis. Sep. 29, 2023). See also *In re Duran v. Rojas*, 630 B.R. 797 (B.A.P. 9th Cir. 2021).

As the *Leavitt* court noted, the Code does not specifically define "cause" in the context of bankruptcy dismissal. *Leavitt*, 171 F.3d at 1224. However, the Ninth Circuit went on to note that "bad faith" is a "cause" for dismissal under § 1307(c), and the court reasoned that "bad faith based on egregious behavior can justify dismissal with prejudice." *Id.* To reach such justification, *Leavitt* continues, a bankruptcy court should consider "the totality of the circumstances," taking into account the following factors: (1) whether the debtor "misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner"; (2) the debtor's history of filings and dismissals"; (3) whether "the debtor only intended to defeat state court litigation"; and (4) whether egregious behavior is present. *Id.* (citations omitted).

"[T]he court is not obligated to count the four *Leavitt* factors as though they present some sort of a box-score but rather is to consider them all and weigh

them in judging the 'totality of the circumstances.'" *In re Lehr*, 479 B.R. 90, 98 (Bankr. N.D. Cal. 2012). The court considers the *Leavitt* factors under the "preponderance of the evidence" standard. *In re Dores*, 2017 Bankr. LEXIS 1539, at *14 (Bankr. E.D. Cal. June 7, 2017).

Here, Debtor's history of filings and dismissal clearly demonstrate an unfair manipulation of the Bankruptcy Code. Prior to the instant case, Debtor has filed for either chapter 7 or chapter 13 ten times in just six years. In each case, the Debtor filed a "bare bones" petition and ignored the ensuing *Notice of Incomplete Filing*, leading inevitably to the dismissal of the case. Thus, the first and second *Leavitt* factors support a finding of bad faith.

It is impossible to say one way or the other whether Debtor's goal is to defeat any pending state court litigation because Debtor's obstinate refusal to provide any documentation of his financial affairs beyond the petition itself gives the court no information upon which to base such a determination. This is, at best, a neutral factor.

Finally, the court must consider whether Debtor's conduct is "egregious" and has little reservation about making such a finding. By way of comparison, the court in *Davis v. Brest-Taylor* applied the *Leavitt* factors and found the debtor's conduct egregious in part because of "[t]he sheer numerosity of filings." 572 B.R. 750, 756 (Bankr. E.D. Cal. 2017). In that case, the debtor had filed six bankruptcies within the preceding eight years, all of which had been dismissed for failure to file documents, make payments, or perform other obligations under the Bankruptcy Code. *Davis*, 572 B.R. at 756. The Debtor in the instant case has filed even more bankruptcies within a shorter span of time, and the court has little difficulty in finding such conduct to be egregious.

Based on the foregoing analysis, the *Leavitt* factors clearly militate towards a finding of bad faith under § 349 on the part of this Debtor that is sufficient to justify the requested two-year bar against refiling. Accordingly, it is hereby ordered that:

1. This motion is GRANTED.
2. This Chapter 13 case will be DISMISSED FOR CAUSE AND WITH PREJUDICE.
3. Debtor Socorro Becerra Macias Lopez is hereby barred from filing a bankruptcy petition without leave of the court for a period of two (2) years from the entry of this order.
4. Leave of court shall be obtained by Debtor Socorro Becerra Macias Lopez attaching to a future bankruptcy petition, while this order is effective, a declaration under oath stating his specific reasons for filing the petition and this order. The petition, declaration, and this order shall be presented to the Chief Judge of the United States Bankruptcy Court for the Eastern District of California. Said petition shall be filed only if permitted by the Chief Bankruptcy Judge.
5. Any bankruptcy case filed in violation of this order by Debtor Socorro Becerra Macias Lopez shall be deemed null and void and dismissed without notice to Debtor.
6. If Debtor Socorro Becerra Macias Lopez violates this Order by filing a bankruptcy petition within the two (2) years following the entry of this order without permission from the court, the court will issue an order to show cause why further sanctions including compensatory and coercive monetary sanctions should not be awarded against Debtor.

11:00 AM

1. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[23-1042](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-12-2023 [[1](#)]

TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATIO V. FUDGE
RILEY WALTER/ATTY. FOR PL.

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

DISPOSITION: Continued to April 30, 2024, at 11:00 a.m.

ORDER: The court will enter the order.

On February 21, 2024, the Debtor-Plaintiff in this adversary proceeding submitted a status report which stated *inter alia*:

1. That counsel for Debtor-Plaintiff and counsel for Defendants Marcia L. Fudge and the United States ("Fudge") had agreed to extend Fudge's deadline to serve a responsive pleading or answer to February 29, 2024.
2. That Debtor-Plaintiff has lodged with the court a proposed Default Judgment against Defendant Pacific Gas and Electric which the court has not yet ruled upon.
3. That based on the foregoing, Debtor-Plaintiff requests a continuance of this Status Conference for sixty (60) days.

4.
Doc. #39.

Accordingly, the Status Conference in this matter is hereby CONTINUED to April 30, 2024, at 11:00 a.m.

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.

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

DISPOSITION: Continued to April 10, 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 February 28, 2024, be continued to April 10, 2024, at 11:00 a.m.

Accordingly, this matter is CONTINUED to that date and time.

3. [23-11788](#)-B-7 **IN RE: MICHAEL RYAN**
[23-1049](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY
PROCEEDING FOR FAILURE TO PROSECUTE
1-26-2024 [[11](#)]

FIRST NATIONAL BANK OF OMAHA
V. RYAN

TENTATIVE RULING: This hearing 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.

On January 24, 2024, the court held a status conference in the above-styled adversary proceeding involving First National Bank of Omaha ("Plaintiff") and Michael Ryan ("Defendant"), the debtor in the underlying bankruptcy case. No appearances were made at the status conference. In response to the failure of Plaintiff's counsel to appear, the court issued an *Order to Show Cause* directing him to appear before the court on February 28, 2024, and show cause why this adversary proceeding should not be dismissed for lack of prosecution. Doc. #11. In that order, the court advised Plaintiff that:

A written response shall be served and filed with the Court at least fourteen (14) days preceding the date of the hearing. Failure to timely file a response shall be deemed as a consent to dismissal of this adversary proceeding for lack of prosecution.

Id. Plaintiff did not timely file a written response to the *Show Cause Order*. Instead, Counsel for Plaintiff filed a succession of requests for entry of default, all of which have one or more procedural defects and none of which constitute a written response to the court's show cause order. *See Docs. ## 14, 17, and 22.* To the extent that it might be relevant to the show cause hearing, the Plaintiff's filings are procedurally defective for reasons including but not limited to the following:

First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings. No DCN accompanies any of the documents pertaining to entry of default which were filed by Plaintiff's counsel.

Second, LBR 9014-1(f)(1) requires the movant to give at least 28 days' notice of a motion. While an alternative procedure allows for the filing of motions on at least 14-days' notice, that alternative procedure cannot be used for a motion filed in connection with an adversary proceeding as this one is. LBR 9014-1(f)(2)(A). The LBR 9014-1(f)(1) notice must be filed as a separate

document and advise respondents that written opposition is required and must be submitted at least fourteen days before the hearing date (LBR 9014-1(f)(1) or the court may enter a default as to nonrespondents and grant the motion without a hearing.

LBR 9014-1(f)(3) does contemplate the hearing of a motion on less than 14 days "[i]n appropriate circumstances and for good cause shown," but this motion was not accompanied by a motion to shorten time, nor does the court perceive any good cause to grant such a motion.

Third, LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, neither the original nor the amended notices contain the required language directing respondents to the pre-hearing dispositions on the court's website, or that parties appearing telephonically are required to view the pre-hearing dispositions prior to appearing at the hearing.

Here, Plaintiff did not file any Notice whatsoever, let alone one which complies with LBR 9014-1(a)-(d).

Next, LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters, and all other proceedings in this district that are filed by attorneys, trustees, or other Registered Electronic Filing System Users to document their service of any such pleadings and/or documents by filing a certificate of service and using the *Official Certificate of Service Form*, EDC 007-005. That form can be found on the court's website at <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited November 14, 2023).

While the last of Plaintiff's motions for entry of default did include a Certificate of Service, Plaintiff did not employ the Official Form.

These procedural errors would be sufficient for the court to reject the aforementioned filings even if they were responsive to the court's directives, which they are not.

On a final note, while the court has focused on the procedural deficiencies in Plaintiff's filings made since the *Order to Show Cause* was entered, the court will not at this time address any of the substantive issues raised by the Plaintiff's filings, as they are not properly before the court. The relevant issue is whether this cause should be dismissed for failure to prosecute. At present, the court is inclined to answer that question in the affirmative.

4. [23-10794](#)-B-7 **IN RE: HOMERO MENDIOLA**
[23-1028](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
7-10-2023 [[1](#)]

EDMONDS V. MENDIOLA
ANTHONY JOHNSTON/ATTY. FOR PL.

After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.

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

DISPOSITION: Status conference is concluded and dropped from the docket.

ORDER: The court will issue the order.

On February 14, 2024, the court approved the proposed settlement between the parties. *See In re Mendiola*, Case No. 2023, 10794, Doc. #31 (*Order Approving Settlement Agreement*). Subsequently, on February 27, 2024, the Trustee filed a *Notice of Dismissal* pursuant to Federal Rule of Civil Procedure 41(a), made applicable in adversary proceedings pursuant to Federal Rule of Bankruptcy Procedure 7041. Doc. #32. Accordingly, this status conference is concluded and will be dropped from the court's calendar.