



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B - Courtroom #13
Fresno, California
Hearing Date: Wednesday April 10, 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.

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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. [19-10708](#)-B-13 **IN RE: ANTONIO/MARTHA AVILES**
[MHM-2](#)

CONTINUED MOTION TO RECONVERT CASE FROM CHAPTER 13 TO
CHAPTER 7
11-17-2023 [[115](#)]

T. O'TOOLE/ATTY. FOR DBT.

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

DISPOSITION: Continued to April 24, 2024, at 9:30 a.m.

ORDER: The court will enter the order.

It is hereby ordered that this matter be continued to April 24, 2024, at 9:30 a.m. to be heard in conjunction with the Debtors' *Motion to Confirm Second Modified Chapter 13 Plan* dated February 20, 2024.

2. [18-14609](#)-B-13 **IN RE: LETICIA ARREDONDO DE CASTILLO**
[LGT-1](#)

MOTION TO DISMISS CASE
3-12-2024 [[37](#)]

LILIAN TSANG/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED

The chapter 13 trustee withdrew this motion on April 8, 2024. Doc. #45. Accordingly, this matter will be taken off calendar pursuant to the trustee's withdrawal.

3. [24-10010](#)-B-13 **IN RE: TY PERRY AND DIANA PELAIZ-PERRY**
[PLG-1](#)

MOTION TO CONFIRM PLAN
2-20-2024 [18]

DIANA PELAIZ-PERRY/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.

NO RULING.

Ty Perry and Diana Pelaiz-Perry (collectively "Debtors") seek an order confirming the *First Amended Chapter 13 Plan* dated February 20, 2024. Doc. #20.

No party has timely objected but the court is not convinced the Plan is feasible.

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 any party in interest, including but not limited to creditors, the U.S. Trustee, and the case Trustee, 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. 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).

The motion requests that the confirmed plan be modified as follows:

1. Plan payments will be as follows: \$2,600.00 per month from February 2024 (month 1) to September 2024 (month 8), then \$3,536.00 per month from October 2024 (month 9) to the end of the life of the plan (month 60).
2. The Debtors' estimated 2023 federal and state tax debt will be added to the plan.
3. The entirety of the attorney's fees owed will be paid by Legal Plan. Attorney's fees will not be paid through the plan.
4. Plan payments will be increased to accommodate the amount owed to the franchise tax board.
5. The Debtors' student loans will be removed from direct pay and added to the plan.
6. The plan will otherwise remain unchanged.

Doc. #21.

Debtors aver that this modification is needed because of the necessity to add the outstanding federal and state tax debt, the amount owed to the Franchise Tax Board, and the Debtors' student loans to the plan. *Id.* Debtors' *Amended Schedule J* indicates a net monthly income of \$2,887.84. Doc. #16. That amount is sufficient to cover the Debtors' plan payments through month 8 but not for the remaining life of the plan.

There is not enough evidence to establish feasibility of this Plan. The Plan calls for increased payments beginning in October 2024. The modified Schedule J attached to the Debtors' declaration establishes the

Debtor's budget does provide enough income to fund the beginning payments. However, there is no evidence before the court as to the ability of the Debtor's to make the higher payment beginning in October. Removing the payments on the student loan debt from direct pay to the plan may or may not affect the budget. It is incumbent on the Debtors to update the income source. Absent proof of feasibility, the court is inclined to DENY confirmation.

4. [23-12715](#)-B-13 **IN RE: VICTOR ISLAS-ZAVALA AND LORENA GONZALEZ**
[TCS-2](#)

CONTINUED MOTION TO CONFIRM PLAN
2-7-2024 [[27](#)]

LORENA GONZALEZ/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion was originally heard on March 13, 2024. Doc. #50.

Victor Isla-Zavala and Lorena Gonzalez ("Debtors") moved for an order confirming the *First Modified Chapter 13 Plan* dated February 7, 2024. Doc. #27. The Chapter 13 Trustee ("Trustee") timely objected on the following grounds:

1. The proposed Modified Plan moves a creditor from Class 4 to Class 1 without the submission of the required Class 1 Checklist to the Trustee. [11 U.S.C. §1325(a)(1)]
2. The proposed plan will take 69.23 months to fund. [11 U.S.C. § 1322(d)].
3. The proposed plan does not cure the current plan payment deficiency. [11 U.S.C. § 1325(a)(6)].

Doc. #37.

The court continued this motion to April 10, 2024. Debtor was directed to file and serve a written response to Trustee's objection not later than fourteen (14) days before the hearing date or file a confirmable, modified plan in lieu of a response no later than seven (7) days before the hearing date, or the objection would be sustained, and the motion would be denied on the grounds stated in the objections without further hearing. Docs. #50.

Debtor neither filed a written response to the objections nor a modified plan. Therefore, Trustee's objection will be SUSTAINED on the grounds stated in the objection, and this motion will be DENIED WITHOUT PREJUDICE.

5. [24-10045](#)-B-13 **IN RE: JAMES/REYNA SALAS**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
3-25-2024 [[23](#)]

JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Continued to Wednesday, May 15, 2024, at 9:30 a.m.

ORDER: The court will issue an order.

The Chapter 13 trustee ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by James and Reyna Salas (collectively "Debtors") on January 9, 2024, on the following basis:

The Debtors failed to provide proof of Social Security Number and failed to appear at the initial 341 Meeting of Creditors which was to be conducted on February 6, 2024 and failed to appear at the continued 341 Meeting of Creditors on March 19, 2024. Doc. #23

This objection will be CONTINUED to **Wednesday, May 15, 2024, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the objection not later than **14 days before the hearing.** The response shall specifically address each issue raised in Trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by **7 days before the hearing.**

If the Debtors elect 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 **7 days before the hearing.** If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

6. [24-10648](#)-B-13 **IN RE: NANCY ALVA**
[SLL-1](#)

MOTION TO EXTEND AUTOMATIC STAY
3-21-2024 [9]

NANCY ALVA/MV
STEPHEN LABIAK/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

Nancy Alva ("Debtor") requests an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #9.

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

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. 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. Under 11 U.S.C. § 362(c)(4)(A), if a debtor has two or more cases pending within the previous year that were dismissed, the automatic stay under subsection (a) will not go into effect when the latter case is filed.

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. 11 U.S.C. § 362(c)(4)(B) allows the court to impose the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing within 30 days where the debtor demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed.

The moving papers omit important details relevant to the court's analysis. First and foremost, this motion asks the court to extend the automatic stay and references her prior case that was filed on February 9, 2024, and dismissed on February 23, 2024. Doc. #9, 11. That case, Case No. 24-10311, was a joint Chapter 13 case filed by Debtor and her husband, John Alva. *Id.*

However, Debtor had a second case (also jointly filed along with Mr. Alva) that was pending within the preceding one-year period that was dismissed: Case No. 23-11198 ("the 2023 case"), which was filed on June 2, 2023, and was dismissed on February 1, 2024, voluntarily after the Chapter 13 Trustee filed a motion to dismiss for failing to confirm a modified Plan, failure to make plan payments and other reasons. Doc. #11. See also Case No. 23-11198 generally. Accordingly, there is no automatic stay at present in this case to extend, and Debtor should have brought a motion to *impose* the automatic stay under § 362(c)(4)(B) instead. The court will treat this motion as one to impose the automatic stay under §362 (c)(4).

Second, while the instant case was brought by Debtor as an individual, and she avers that her last joint case was dismissed because her estranged husband refused to sign required documents, her declaration in the current case states that her attorney "has composed a Chapter 13 plan in which *my husband and I* will pay our secured and priority debts" with a 0% distribution for "my unsecured debts." Doc. #11.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(4)(D) exist. 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. The subsequently filed case is presumed to be filed in bad faith as to all creditors because Debtor failed to make plan payments in the earlier case or failure to file or amend the petition or other documents as required by the Bankruptcy Code or the court in the most recent dismissed case without substantial excuse. §362(c)(4)(D)(i)(II). Debtor declares that the 2024 case was dismissed because she was separated from her husband and co-debtor, and he refused to sign the required documents the non-filing of which instigated the court's Notice of Deficiency which later led to the dismissal. Doc. #11. The court finds that this is not a substantial excuse.

Finally, a glance beyond the one-year lookback period from § 362(c)(4) reveals that this Debtor is a prolific serial filer, and her current case is the *twelfth* bankruptcy she has filed since 2011, though it is the first one she has filed as an individual and without Mr. Alva as joint debtor.

The *Chapter 13 Plan* dated March 15, 2024, provides for 60 monthly payments of \$850.00 with a 100% dividend to unsecured claims. Doc. #3. Debtor's *Schedules I and J* indicate that Debtor receives exactly \$850.00 in monthly net income, which is sufficient for Debtor to afford the proposed plan payment. Doc. #1. Nevertheless, the court finds that the facts surrounding the instant motion contain powerful evidence of bad faith that is not overcome by the mere fact that Debtor's filings purport to show that she can make her proposed plan payments. The

Debtor here has not come close to clear and convincing proof to overcome the bad faith presumption.

This matter will be called and proceed as scheduled. In the absence of persuasive arguments to the contrary, the court is inclined to DENY this motion. The court will consider any such arguments, either from Debtor or in opposition, and determine whether further hearing is proper pursuant to LBR 9014-1(f) (2).

7. [23-12154](#)-B-13 **IN RE: BRIAN PHIPPS**
[SL-1](#)

MOTION TO AVOID LIEN OF BANK OF AMERICA, N.A.
3-1-2024 [\[31\]](#)

BRIAN PHIPPS/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

Brian Phipps ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Bank of America, N.A. ("BOA") in the amount of \$31,996.12 and encumbering residential real property located at 348 S. Fir St., Porterville, California 93257 ("Property"). Doc. #31.

Debtor complied with Fed. R. Bankr. P. 7004(b) (3) by serving Creditor's registered agent for service of process via first class mail on June 15, 2023. Doc. #17. Debtor also complied with Rule 7004(h), which requires service to be made by **certified mail and addressed to an officer**, unless one of three exceptions specified in subsections (h) (1) to (3) have been met. *Id.*

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

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 chapter 7 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.

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of BOA in the amount of \$31,996.12 on March 2, 2022. *Ex. D*, Doc. #34. The abstract of judgment was issued on August 29, 2022, and was recorded in Tulare County on October 19, 2022. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #33. Debtor estimates that the current amount owed on account of this lien is \$31,995.12. *Id.*

As of the petition date, Property had an approximate value of \$487,500.00. *Sched. A/B*, Doc. #1. Debtor claimed a \$300,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C, Id.*

Property is encumbered by a first deed of trust in favor of PennyMac Loan Services, LLC ("PennyMac") in the amount of \$387,218.00. *Sched. D, Id.* Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. PennyMac	\$387,218.00	11/18	Unavoidable
2. BOA	\$31,996.12	10/19/22	Avoidable

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B). Here, Debtor only seeks to avoid one lien.

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

This lien is the most junior lien subject to avoidance and there is not any equity to support the lien. Strict application of the § 522(f)(2)

formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien	\$31,996.12
Total amount of unavoidable liens	+ \$387,218.00
Debtor's claimed exemption in Property	+ 300,000.00
<i>Sum</i>	= \$719,214.12
Debtor's claimed value of interest absent liens	- \$487,500.00
Extent lien impairs exemption	= \$231,714.12

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); accord. *Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); cf. *Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third parties, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property	\$487,500.00
Total amount of unavoidable liens	- \$387,218.00
Homestead exemption	- 300,000.00
Remaining equity for judicial liens	= (\$199,718.00)
Creditor's judicial lien	- \$31,996.12
Extent Debtor's exemption impaired	= (\$231,714.12)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support any judicial liens. Therefore, the fixing of Creditor's judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall state that Creditor's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.

8. [23-12154](#)-B-13 **IN RE: BRIAN PHIPPS**
[SL-2](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
3-1-2024 [[36](#)]

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

Scott Lyons, Attorney at Law ("Applicant"), attorney for Brian Phipps ("Debtor"), seeks interim compensation in the sum of \$7,347.50 under 11 U.S.C. § 331, subject to final review pursuant to § 330. Doc. #36. This amount consists of \$6,997.50 in fees and \$350.00 in expenses from July 29, 2020, through February 29, 2024. *Id.*

Debtor executed a statement of consent dated January 29, 2024, indicating that Debtor has read the fee application and approves the same. *Id.* (§9(7)).

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

Section 3.05 of Debtor's confirmed chapter 13 plan provides Debtor's attorney was paid \$1,687.00 prior to filing the case and, subject to court approval, additional fees of \$15,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329 & 330 and Fed. R. Bankr. P. 2002, 2016-17.

This is Applicant's first interim fee application. Applicant's firm provided **32.4** billable hours of legal services at the following rates, totaling **\$7,347.00** in fees:

Professional	Rate	Hours	Fees
Scott Lyons	\$400.00	0.97	\$388.00
Louis Lyons	\$350.00	10.29	\$3,426.50
Sylvia Gutierrez (LS)	\$150.00	16.72	\$2,858.00
Courtney Glesbrecht-Lyons (AA)	\$150.00	4.50	\$675.00
Total Hours & Fees		32.48	\$7,347.50

Docs. ##36, 38.

Applicant also incurred **\$350.00** in expenses:

Filing Fees	\$313.00
Credit Reports; Court Call Fee	\$37.00
Total Costs	\$350.00

Id. There is some ambiguity in the moving papers as to whether \$7,347.50 is just attorney's fees or whether it is the sum of the fees and expenses. The "Summary by Professional" chart in the motion indicate the former, stating \$7,347.50 as the "Total Hours and Fees" incurred. Doc. #36(§7). However, the "Category Fee Summary" in the motion indicates that a total of \$6,997.50 were charged, and when the \$350.00 in expenses from the "Expense Summary" are added to that, the sum is also \$7,347.50. Doc. #36(§5 and §6). The billing records offered as an exhibit include "Reimbursable expenses" as line entries before reaching a total fee of \$7,347.50. Doc. #38. Further confusing matter, in the "Narrative Summary," Applicant states that he requests \$7,347.50, but that he not only wishes to apply the prepetition retainer to that but also to subtract the \$350.00 in expenses, to yield a final request of \$5,347.50. Doc. #38 ("Narrative Summary").

For future reference, the court encourages Applicant to review fee applications carefully to prevent such ambiguities that complicate the court's review of the application, particularly since, in this case at least, Applicant is billing \$1,204.00 simply for the fee application. See Doc. #36, § 5 ("Category Fee Summary").

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" 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 here included, without limitation: prepetition consultation and fact-gathering; preparation of the petition, schedules, and Form 22-C; independent verification of information; amendments to petitions and/or Schedules; matters pertaining to plan confirmation; 341 preparation and appearance; motions; fee applications; case administration; and other/communication-correspondence. The court finds the services and expenses reasonable, actual, and necessary. As noted

above, Debtor reviewed the fee application and consents to payment of the requested compensation.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded **\$5,347.50** in fees as reasonable compensation for services rendered and expenses incurred on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. The chapter 13 trustee will be authorized, in the trustee's discretion, to pay Applicant **\$5,347.50** for services rendered and costs incurred between July 29, 2020, and February 29, 2024.

9. [21-10061](#)-B-13 **IN RE: JACINTO/KAREN FRONTERAS**
[GEG-8](#)

MOTION TO MODIFY PLAN
2-21-2024 [[208](#)]

KAREN FRONTERAS/MV
GLEN GATES/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.

Jacinto and Karen Fronteras (collectively "Debtors") move for an order confirming Debtors' *Third Modified Chapter 13 Plan* dated February 21, 2024. Docs. ##208, 211.

No party has timely objected.

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 any party in interest, including but not limited to creditors, the U.S. Trustee, and the case Trustee, 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. 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).

The motion requests that the confirmed plan be modified as follows:

1. Debtors' attorney will have an Administrative Claim in the amount of \$12,000.00 (minus a \$2,500.00 prepetition retainer). Payments to attorney will commence after all secured and nonpriority unsecured claims (other than the ongoing mortgage) have been paid. Attorney fee payments will be paid pro rata with the general unsecured non-priority creditors, and any balance remaining at the time of discharge shall be nondischargeable and payable by Debtors upon receiving a discharge.
2. Plan payments from commencement of the plan through January 2024 will be \$122,549.54, which includes aggregate monthly plan payments

- and the sum of \$7,156.53 from the Chapter 7 Trustee and \$5,869.12 as net proceeds from the sale of real property.
3. For the month of February 2024, the debtors will pay \$8,600.00.
 4. Beginning March 2024 and continuing for the life of the plan, Debtors will pay \$4,000.00 per month.
 5. The administrative claim of James E. Salven has a principal balance due of \$1,457.90 as of February 2024 and will be paid with a dividend of \$125.12 from March 2024 through July 2024, with the balance of \$832.30 to be paid in August 2024.
 6. The delinquency in the Class 1 claim of PennyMac Loan Service LLC for ongoing mortgage payments will be cured with two payments of \$2,506.95 in May and July 2024.
 7. The delinquency in the Class 1 claim of PennyMac Loan Service LLC for late fee charges will be cured with two payments of \$92.17 in May and July 2024.
 8. The delinquency in the Class 1 claim of PennyMac Loan Service LLC for prepetition arrearages will be cured with two payments of \$2,506.95 in May and July 2024.
 9. The Class 2 Secured Creditor First California Creditor (for a 2016 Toyota) has been paid \$26,677.36 in principal and \$292.31 in interest through Jan 2024. Payments of \$488.00 for the remaining balance will begin in March 2024 until paid.
 10. The prepetition lease arrears owed to Class 2 Creditor Rocky Top Rentals has been paid \$1,845.32 through January 2024. Payments of \$31.66 for the remaining balance will begin in March 2024 until paid.
 11. Non-priority unsecured claims will be paid a total of \$25,000.00 through the plan. Debtors have already paid \$11,878.96 through the plan. The balance, \$13,121.04, will be paid on a pro rata basis along with the \$12,000.00 owed in attorneys' fees, with dividends expected to commence in August 2024.

Doc. #211.

Debtors aver that this modification is necessary because Mr. Fronteras did not timely receive his retirement check on one or more occasions, while Mrs. Fronteras was ill and unable to work in September and October of 2023. Doc. #210. This caused Debtors to fall behind on will be cured three (3) plan payments. *Id.* The problem appears to be resolved and Debtors declare that they will be able to pay plans forward and cure the deficiency. *Id.*

This is confirmed by Debtors' *Amended Schedule I & J*, which reflects a monthly net income of \$4,070.00, up from \$3,842.00. which was their monthly net income as calculated in prior Schedule J. Docs. ##131, 195.

The court notes that the attachment to the proposed Third Amended Plan contains a provision preserving counsel fees as a claim against the Debtors post-discharge. Though that may be permissible, counsel for the debtors should include the previously approved language in the order confirming the plan providing the conditions for preserving the fee claim post-discharge. The language is available and used by other practitioners and should be available from the Trustee.

No party has objected, and so, this motion is GRANTED. The order shall include the docket control number of the motion, the approved post-

discharge fee language, shall reference the plan by the date it was filed, and shall be approved as to form by Trustee.

10. [24-10161](#)-B-13 **IN RE: ERNESTO/ASHLEY ARELLANO**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
3-25-2024 [\[21\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Continued to Wednesday, May 15, 2024, at 9:30 a.m.

ORDER: The court will issue an order.

The Chapter 13 trustee ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Ernesto and Ashley Arellano (collectively "Debtors") on January 24, 2024, on the following basis:

1. The Debtors failed to appear at the initial 341 Meeting of Creditors which was to be conducted on March 19, 2024. [11 U.S.C. § 1325(a)(1)].
2. The plan does not provide for all of Debtors' projected disposable income to be applied to unsecured creditors. [11 U.S.C. § 1325(b)(1)(B)]. The proposed plan calls for a 4% distribution to unsecured creditors, but their monthly disposable income indicates that they have sufficient income to provide a 73.38% dividend.

Doc. #21.

This objection will be CONTINUED to **Wednesday, May 15, 2024, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the objection not later than **14 days before the hearing**. The response shall specifically address each issue raised in Trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by **7 days before the hearing**.

If the Debtors elect 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 **7 days before the hearing**. If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

11. [24-10769](#)-B-13 **IN RE: NANCY/STEVE WILLIAMS**
[SDS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
3-27-2024 [[10](#)]

STEVE WILLIAMS/MV
SUSAN SILVEIRA/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.

Nancy and Steve Williams ("Debtors") request an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #10.

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. 23-12347 ("the 2023 case"), which was filed on October 20, 2023, and was voluntarily dismissed on February 9, 2024. Doc. #11. *See also Case No. 23-12347 generally.* The current case was filed on 26, 2024 (Doc. #1), and the automatic stay will expire on April 25, 2024, if not extended.

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.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. 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. The subsequently filed case is presumed to be filed in bad faith as to all creditors because Debtor failed to file or amend the petition or other documents as required by the Bankruptcy Code or the court without substantial excuse. § 362(c) (3) (C) (i) (II) (aa).

Debtors declare that they elected to voluntarily dismissed the 2023 case because they became aware that they would have a substantial and unanticipated tax liability for 2023, and they wished to propose a new plan to address all outstanding debt, including the tax liability. Doc. #12.

The *Chapter 13 Plan* dated March 26, 2024, provides for 60 monthly payments of \$1,875.00 with a 0% dividend to unsecured claims. Doc. #3. The plan estimates that priority unsecured claims will total \$44,065.83 and nonpriority unsecured claims will total \$445,722.95. *Id.* Debtor's *Schedules I and J* indicate that Debtor receives exactly \$1,875.46 in monthly net income, which is sufficient for Debtor to afford the proposed plan payment. Doc. #1.

In the 2023 case, the plan provided for 60 monthly payments of \$2,040.00 with a 0% dividend to unsecured creditors. *See Doc. #7 in the 2023 case.* The plan estimated that priority unsecured claims totaled \$48,926.29 and nonpriority unsecured claims totaled \$395,649.18 (approximately \$50,000.00 less than are listed in the current case). *Id.* In the *Schedule J* filed in the 2023 case, Debtors had a net monthly income of \$2,040.31. *See Doc. #1 in the 2023 case.* Thus, it appears that the Debtors' monthly net income has declined by just under \$200.00 per month.

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).

12. [19-14173](#)-B-13 **IN RE: GONZALO ADAME AND MARTHA RAMIREZ DE
ADAME
[LGT-1](#)**

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
2-29-2024 [[114](#)]

LILIAN TSANG/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Withdrawn.

ORDER: No order is necessary since the motion is withdrawn.

On March 28, 2024, the Chapter 13 Trustee, through a supplement to the instant motion, has advised the court that creditor Wilmington Savings Funds Society ("Wilmington") FSB, "not in its individual capacity but solely as Certificate Trustee of Bosco Credit II Trust Series 2010-1," had filed an Amended Response to the Notice of Final Cure, which confirmed that "the Debtors are current with all post-petition payments consistent with §1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs" and that "[t]he next post-petition payment from the debtors is due on April 1, 2024." Trustee further submits that the issues underlying the motion are resolved, which the court interprets to be a Withdrawal of the motion.

Accordingly, this motion is WITHDRAWN.

13. [19-12878](#)-B-13 **IN RE: MICHAEL/SALENA NOWAK
[PBB-3](#)**

MOTION TO MODIFY PLAN
2-28-2024 [[72](#)]

SALENA NOWAK/MV
PETER BUNTING/ATTY. FOR DBT.
PLAN WITHDRAWN

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

DISPOSITION: Withdrawn.

No order is necessary.

On March 27, 2024, the Debtors filed a Notice of Withdrawal of their Second Modified Chapter 13 Plan. Accordingly, this matter is WITHDRAWN.

14. [23-12585](#)-B-13 **IN RE: RONALD BARHAM**
[JDD-1](#)

MOTION TO CONFIRM PLAN
2-22-2024 [[32](#)]

RONALD BARHAM/MV
JONATHAN DOAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

On April 5, 2024, the Debtor in this case filed his *Third Amended Chapter 13 Plan*. Doc. #40. Accordingly, the instant motion to confirm his *Second Amended Plan* dated February 12, 2024, will be DENIED AS MOOT.

15. [24-10187](#)-B-13 **IN RE: EDWARD MARTIN**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
3-25-2024 [[24](#)]

ERIC GRAVEL/ATTY. FOR DBT.

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

DISPOSITION: Continued to Wednesday, May 15, 2024, at 9:30 a.m.

ORDER: The court will issue an order.

The Chapter 13 trustee ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Edward Martin ("Debtor") on February 9, 2024, on the following basis:

1. The Debtor failed to provide proof of Social Security Number or identification and failed to appear at the initial 341 Meeting of Creditors which was to be conducted on March 19, 2024. [11 U.S.C. § 1325(a)(1)].
2. Debtor is delinquent \$5,598.86 and has yet to make a plan payment.

Doc. #24.

This objection will be **CONTINUED to Wednesday, May 15, 2024, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the objection not later than **14 days before the hearing**. The response shall specifically address each

issue raised in Trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by **7 days before the hearing**.

If the Debtors elect 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 **7 days before the hearing**. If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

16. [24-10590](#)-B-13 **IN RE: MANNY MARCOS**
[LGT-1](#)

MOTION TO DISMISS CASE
3-13-2024 [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 Manny Marcos ("Debtor") is a serial filer and that this case was filed in bad faith. Doc. #9. This is the sixth petition filed by Debtor since 2012, 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 March 25, 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. #11. It appears that since 2012, Debtor has filed for bankruptcy in five prior cases: 12-10255 (Ch. 13), 23-10341 (Ch. 13), 23-10758 (Ch. 13), 23-11206 (Ch. 13), and 23-12927 (Ch. 13)). *Id.* All those cases were filed *pro se*, as was the instant case, and all five of the prior cases were dismissed prior to plan confirmation (or even the filing of a plan) for failure to timely file documents. *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) (*superseded 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 dismissals clearly demonstrate an unfair manipulation of the Bankruptcy Code. Prior to the instant case, Debtor has filed for chapter 13 *four* times in just one year. 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.

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 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 Manny Marcos 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 Manny Marcos 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.

17. [22-11792](#)-B-13 **IN RE: JOSEPH/SEPTEMBER MIDDLETON**
[DMG-3](#)

MOTION TO MODIFY PLAN
3-6-2024 [[56](#)]

SEPTEMBER MIDDLETON/MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 15, 2024, at 9:30 a.m.

ORDER: The court will issue an order.

Joseph Middleton and September Middleton ("Debtors") move for an order confirming the *Second Amended Chapter 13 Plan* dated March 6, 2024. Doc. #56. The current plan in this case was confirmed on February 13, 2023. Doc. #34. Chapter 13 trustee Lilian G. Tsang ("Trustee") timely objected to confirmation of the plan for the following reason(s):

Pursuant to the Second Amended Plan, Debtor is delinquent \$3,550.00 to be current through February 2024. A total of \$56,800.00 has come due including February 2024, and the Debtor has only paid a total of \$53,250.00 to date. An additional plan payment of \$3,550.00 will come due on March 25, 2024.

Doc. #61.

This motion to confirm plan will be CONTINUED to **May 15, 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. Any replies shall be filed and served 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.

18. [23-11793](#)-B-13 **IN RE: JONATHAN PRICE**
[SL-1](#)

MOTION TO MODIFY PLAN
2-29-2024 [[30](#)]

JONATHAN PRICE/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

Jonathan Price ("Debtors") moves for an order confirming *Debtor's First Amended Chapter 13 Plan* dated February 29, 2023. Doc. #35.

No party has timely objected.

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 any party in interest, including but not limited to creditors, the U.S. Trustee, and the case Trustee, 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. 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).

The only significant change in the proposed Modified Plan is that Debtor wishes to reduce his monthly plan payment from \$1,750.00 per month to \$1,460.00 per month. *Compare* Doc. #3 *and* Doc. #35. The plan otherwise treats all creditors the same as the original confirmed plan would have, with a 100% distribution to unsecured nonpriority creditors. *Id.* According to Debtor, this reduction is permissible because, upon review of the filed proofs of claims made by Debtor's counsel after the deadline for filing proofs of claim had run, the total amount of unsecured debt to be paid through the plan is roughly half of what was contemplated by the original confirmed plan. Doc. #31.

No party has objected, and so, this motion is GRANTED. The order shall include the docket control number of the motion, shall reference the plan by the date it was filed, and shall be approved as to form by Trustee.

19. [23-11793](#)-B-13 **IN RE: JONATHAN PRICE**
[SL-2](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
2-29-2024 [[38](#)]

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

Scott Lyons, Attorney at Law ("Applicant"), attorney for Jonathan Price ("Debtor"), seeks interim compensation in the sum of \$6,447.36 under 11 U.S.C. § 331, subject to final review pursuant to § 330. Doc. #38. This amount consists of \$6,090.00 in fees and \$357.36 in expenses from December 20, 2022 through February 28, 2024. *Id.*

Debtor executed a statement of consent dated February 28, 2024, indicating that Debtor has read the fee application and approves the same. *Id.* (§9(7)).

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

Section 3.05 of Debtor's confirmed chapter 13 plan provides Debtor's attorney was paid \$1,537.00 prior to filing the case and, subject to court approval, additional fees of \$12,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329 & 330 and Fed. R. Bankr. P. 2002, 2016-17. Doc. #3.

This is Applicant's first interim fee application. As with Applicant's other Application (*Phipps, Item #6*, above), this Application has some inconsistencies. The motion includes a "Category Fee Summary" which states that Applicant worked 26.44 hours during the relevant time

period. Doc. #38(\$5). That chart also states that Applicant incurred **\$6,090.00** in fees. *Id.* The motion also includes a "Summary by Professional" which agrees that Applicant billed 26.44 hours for a total of **\$6,090.00**, as reflected in the chart below:

Professional	Rate	Hours	Fees
Scott Lyons	\$400.00	1.34	\$536.00
Louis Lyons	\$350.00	9.82	\$3,262.00
Sylvia Gutierrez (LS)	\$150.00	12.96	\$1,944.00
Courtney Glesbrecht-Lyons (AA)	\$150.00	2.32	\$348.00
Total Hours & Fees			26.44 \$6,090.00

Doc. #38(\$7). Applicant also incurred **\$357.36** in expenses:

Filing Fees	\$313.00
Postage	\$1.36
Copies/Stationery	\$6.00
Credit Reports; Court Call Fee	\$37.00
Total Costs	\$357.36

Doc. #38. However, the billing records submitted as an exhibit calculate the total attorney's fees incurred as **\$6,447.36**, with line entries for "Reimbursable expenses" which total **\$357.36**. Doc. #40.

According to Section 3.05 of the confirmed plan, Applicant was paid \$1,537.00 prior to the filing of the case, with \$12,000.00 to be paid through the plan with court approval. Doc. #3. The instant motion says that Debtor only paid \$1,500.00 as a retainer, and the motion proposes to subtract that amount, \$37.00 (for a credit report), and \$313.00 (for the filing fee) from the \$6,447.36 total. Doc. #40. Thus, this interim award which Applicant seeks to be paid through the plan is **\$4,597.36**. *Id.*

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" 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 here included, without limitation: prepetition consultation and fact-gathering; preparation of the petition, Schedules, and Form 22-C; independent verification of information; 341 preparation and attendance; work pertaining to the 1st Amended/Modified Plan; work pertaining to motions to dismiss; fee applications; case administration; and other/communication-correspondence. Doc. #38. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Debtor reviewed the fee application and consents to payment of the requested compensation. *Id.*

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded **\$4,597.36** in compensation for fees and expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. The chapter 13 trustee will be authorized, in the trustee's discretion, to pay Applicant **\$4,597.36** for services rendered and costs incurred between December 20, 2022, and February 28, 2024.

11:00 AM

1. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1033](#) [WJH-2](#)

MOTION TO COMPEL
3-13-2024 [[698](#)]

SUGARMAN V. IRZ CONSULTING,
LLC ET AL
JOHN MACCONAGHY/ATTY. FOR MV.

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

DISPOSITION: Withdrawn.

No order is needed.

On April 3, 2024, the Movant withdrew the instant *Motion to Compel* and asked that it be taken off the calendar. Accordingly, this motion is WITHDRAWN.

2. [23-11154](#)-B-7 **IN RE: MATTHEW BOTWRIGHT**
[23-1035](#)

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

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

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

DISPOSITION: Continued to June 12, 2024, at 11:00 a.m.

ORDER: The court will prepare the order.

On April 1, 2024, Plaintiff-Debtor Matthew Owen Botwright filed a *Status Report* averring that the parties in this adversary agree in principle to settlement of the underlying issues and are currently working on a proposed Stipulation and Order. Botwright requests a 60-day continuance. Accordingly, this matter will be CONTINUED to June 12, 2024, at 11:00 a.m.

3. [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.
DISMISSED 3/18/24

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

DISPOSITION: Concluded. Dropped from calendar.

No order is required.

On March 18, 2024, this court entered an *Order of Dismissal* in this case. Accordingly, this Status Conferences is CONCLUDED AND DROPPED FROM THE CALENDAR.