



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, April 13, 2023  
Department A – Courtroom #11  
Fresno, California**

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) **IN PERSON** in Courtroom #11 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Policies and Procedures](#) for these and additional instructions.
3. Parties appearing through CourtCall are encouraged to review the [CourtCall Appearance Information](#).

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## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

**THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.**

9:30 AM

1. [21-12006](#)-A-13      **IN RE: KRYSTAL WEDEKIND**  
[FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR  
GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)  
2-15-2023    [\[50\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION:      Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Fear Waddell, P.C. ("Movant"), counsel for Krystal Gale Wedekind ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$4,621.00 and reimbursement for expenses in the amount of \$237.97 for services rendered from April 1, 2022 through January 31, 2023. Doc. #50. Debtor's confirmed plan provides, in addition to \$4,687.00 paid prior to filing the case, for \$12,000.00 in attorney's fees to be paid through the plan. Am. Plan, Doc. ##33, 49. One prior fee application has been approved authorizing interim compensation in the amount of \$2,384.00 and reimbursement of expenses in the amount of \$327.96. Doc. #43. Debtor consents to the fees and costs requested by Movant. Ex. E, Doc. #52.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's first modified plan; (2) preparing opposition to motion to dismiss; (3) analyzing Notice of Filed Claims prepared by chapter 13 trustee and regular correspondence from Debtor's mortgage company; (4) preparing the fee application; and (5) general case administration. Exs. A, B & C, Doc. #52.

The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$4,621.00 and reimbursement for expenses in the amount of \$237.97 to be paid in a manner consistent with the terms of the confirmed plan.

2. [22-11707](#)-A-13     **IN RE: JUAN MARTINEZ AND CONSUELO DE MARTINEZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
3-9-2023    [[39](#)]

PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on April 11, 2023. Doc. #43.

3. [23-10010](#)-A-13     **IN RE: PARMINDER SINGH AND RANJIT KAUR**  
[APN-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON  
2-15-2023    [[27](#)]

THE BANK OF NEW YORK MELLON/MV  
JERRY LOWE/ATTY. FOR DBT.  
AUSTIN NAGEL/ATTY. FOR MV.

NO RULING.

4. [22-12130](#)-A-13     **IN RE: CECILIA QUINONEZ**  
[CJK-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TOWD POINT MORTGAGE TRUST  
2019-2, U.S. BANK NATIONAL ASSOCIATION  
2-7-2023    [[15](#)]

TOWD POINT MORTGAGE TRUST 2019-2, U.S. BANK NATIONAL  
PETER BUNTING/ATTY. FOR DBT.  
CHRISTINA KHIL/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

5. [23-10233](#)-A-13     **IN RE: CRYSTAL MENDEZ**  
[DJP-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-16-2023    [\[13\]](#)

EDUCATIONAL EMPLOYEES CREDIT UNION/MV  
STEPHEN LABIAK/ATTY. FOR DBT.  
DON POOL/ATTY. FOR MV.  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on March 22, 2023. Doc. #43.

6. [22-10144](#)-A-13     **IN RE: VANESSA GONZALES**  
[MHM-1](#)

MOTION TO DISMISS CASE  
3-9-2023    [\[35\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:                    Granted.

ORDER:                            The court will issue an order.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the default of the debtor is entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(6) because the debtor has failed to make all payments due under the plan. The debtor is delinquent in the amount of \$8,249.36. Doc. #35. Before this hearing, another payment in the amount of \$3,080.28 will also come due. Id. The debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(6) to dismiss this case because the debtor has failed to make all payments due under the plan.

There is less than \$2,800.00 in liquidation amount after trustee compensation, comprised of equity in two vehicles and money in a bank account. Decl. of Kelsey A. Seib, Doc. #37. Because there is minimal equity for the benefit of a chapter 7 estate, the court finds that dismissal, rather than conversion, is in the best interest of creditors of the estate.

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

7. [23-10549](#)-A-13     **IN RE: YESENIA MADRIGAL**  
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
3-24-2023    [8]

YESENIA MADRIGAL/MV  
SCOTT LYONS/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 court will issue an order.

This motion was filed and served on at least 14 days' notice prior to the hearing date 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 consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Yesenia Samantha Madrigal ("Debtor") moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B).

Debtor had a Chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 23-10278 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on February 17, 2023 and dismissed on March 7, 2023. See Case No. 23-10278, Doc. #1, 11. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtor filed this case on March 20, 2023. Petition, Doc. #1. The automatic stay will terminate in the present case on April 19, 2023.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-

day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]” 11 U.S.C. § 362(c) (3) (B) .

Section 362(c) (3) (C) (i) creates a presumption that the case was not filed in good faith if (1) the debtor filed more than one prior case in the preceding year; (2) the debtor failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) the debtor has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c) (3) (C) (i) .

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c) (3) (C) . 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. 1795 (2019) .

In this case, the presumption of bad faith arises. Debtor failed to timely file documents in the Prior Case. A review of the court’s docket in the Prior Case discloses that the chapter 13 trustee (“Trustee”) filed a Notice of Incomplete Filing or Filing of Outdated Forms and Intent to Dismiss Case if Documents are Not Timely Filed (the “Notice”) on February 22, 2023, and the court dismissed the Prior Case because of Debtor’s failure to file missing documents by March 3, 2023 or to address the Notice in the time and manner prescribed by LBR 3015-1(g) . See Case No. 23-10278, Doc. ##9, 10, 11, 12. Debtor acknowledges that the Prior Case was dismissed for failure to timely file documents. Decl. of Yesenia Samantha Madrigal, Doc. #10.

In support of this motion to extend the automatic stay, Debtor declares that the documents in the Prior Case were not filed because Debtor filed the Prior Case without the assistance of bankruptcy counsel and did not know or understand how to complete her chapter 13 petition, statements and schedules, or how to compose and file a chapter 13 plan before the dismissal date as a pro per debtor. Madrigal Decl., Doc. #10. Debtor declares her circumstances have changed because Debtor has retained the services of experienced bankruptcy counsel Scott Lyons, who has explained Debtor’s rights and responsibilities under chapter 13. Id. Debtor has proposed a chapter 13 plan that will pay all secured debt and 1000% to unsecured creditors. Id.

The court is inclined to find that Debtor’s previous circumstances of being a pro per debtor in the Prior Case rebut the presumption of bad faith that arose from the failure of Debtor to file missing documents in the Prior Case and that Debtor’s petition commencing this chapter 13 case was filed in good faith. Moreover, the court recognizes that Debtor has had a substantial change in her financial affairs since dismissal of the Prior Case because Debtor states that her mother, who is living with her and sharing living expenses, is making \$2,000.00 per month that she is willing to contribute to Debtor’s household income in order to fund Debtor’s chapter 13 plan.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes only as to those parties served with notice of Debtor’s motion, unless terminated by further order of the court. If opposition is presented at the hearing, the court will consider the opposition and whether a further hearing is necessary.

8. [23-10152](#)-A-13      **IN RE: JERRY MEDRANO**  
[KMM-1](#)

CONTINUED HEARING RE: OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR  
CREDIT CORPORATION  
2-24-2023    [\[13\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

9. [22-10973](#)-A-13      **IN RE: DANIEL NAKAHIRA**  
[PLG-3](#)

MOTION TO MODIFY PLAN  
2-28-2023    [\[62\]](#)

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

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

DISPOSITION:      Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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



10. [20-12881](#)-A-13     **IN RE: NANCY MORENO**  
[TCS-3](#)

MOTION TO MODIFY PLAN  
3-7-2023    [\[49\]](#)

NANCY MORENO/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

11. [22-11484](#)-A-7     **IN RE: HELEN COLLINS**  
[MHM-1](#)

MOTION TO DISMISS CASE  
3-8-2023    [\[36\]](#)

PETER BUNTING/ATTY. FOR DBT.  
CONVERTED TO CHAPTER 7 ON 3/16/23

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

On March 16, 2023, this chapter 13 case was voluntarily converted to a case under chapter 7. Doc. #42. Therefore, the motion to dismiss the chapter 13 case will be dropped as moot.

12. [23-10391](#)-A-13     **IN RE: ALFREDO FERNANDEZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
3-7-2023    [[11](#)]

DISMISSED 3/13/23

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

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

An order dismissing this case was entered on March 13, 2023. Doc. #15.  
Therefore, this motion will be DENIED AS MOOT.

13. [23-10297](#)-A-13     **IN RE: MARY RALPHS**  
[ELP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-16-2023    [[19](#)]

U.S. BANK TRUST NATIONAL ASSOCIATION/MV  
ERICA LOFTIS/ATTY. FOR MV.  
DISMISSED 03/13/2023

NO RULING.

11:00 AM

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

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

LIMA V. RENNA  
HENRY NUNEZ/ATTY. FOR PL.  
DISMISSED 3/28/23

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

DISPOSITION:    Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed by stipulation on March 28, 2023.  
Doc. #43.

2. [21-12348](#)-A-11    **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**  
[22-1004](#)    [SR-3](#)

STATUS CONFERENCE RE: MOTION TO COMPEL  
11-29-2022    [[34](#)]

JUAREZ BROTHERS INVESTMENTS, LLC V. GRIMMWAY ENTERPRISES, INC.  
THOMAS WOODS/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

3. [21-10679](#)-A-13    **IN RE: SYLVIA NICOLE**  
[21-1023](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT  
5-26-2021    [[1](#)]

U.S. TRUSTEE V. NICOLE  
JUSTIN VALENCIA/ATTY. FOR PL.  
CONT'D TO 7/20/23 PER ECF ORDER #91

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

DISPOSITION:    Continued to July 20, 2023 at 11:00 a.m.

NO ORDER REQUIRED.

On March 15, 2023, the court issued an order continuing the pre-trial  
conference to July 20, 2023 at 11:00 a.m. Doc. #91.