



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, April 24, 2025
Department A - Courtroom #11
Fresno, California

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

All parties 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/CourtAppearances>. Each party 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 who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest 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 appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

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.

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

1. [24-13300](#)-A-13 **IN RE: MICHAEL/MIRIAM BIAS**
[PBB-2](#)

CONTINUED MOTION TO CONFIRM PLAN
1-24-2025 [\[37\]](#)

MIRIAM BIAS/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

2. [24-11203](#)-A-13 **IN RE: DAVID TUROWSKI**

MOTION FOR COMPENSATION FOR NEIL C. EVANS, DEBTORS ATTORNEY(S)
7-28-2024 [\[54\]](#)

NEIL EVANS/ATTY. FOR DBT.
DISMISSED 06/18/2024;

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 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, LBR 9014-1(d)(3)(D) requires in relevant part that "[e]very motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." Here, there the declaration and supporting breakdown of the compensation sought are part of the application and not set forth in a separate declaration or exhibit. Doc. ##54, 68, 70.

As a further procedural matter, the motion and supporting papers do not comply with LBR 9014-1(c). "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once

a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6). Here, no DCN was assigned to the motion.

As a further procedural matter, the notice of hearing, proof of service, declaration and motion and amended notice of hearing, proof of service, declaration and motion (Doc. ##54, 68, 70) do not comply with LBR 9004-2(c)(1), which requires the notice of hearing, proof of service, declaration and the motion to be filed as separate documents. Here, the motion and supporting documents were filed as a single document.

As a further procedural matter, the certificates of service filed in connection with this motion (Doc. ##68, 70) do not comply with LBR 7005-1, which requires attorneys and trustees to use the court's Official Certificate of Service Form (EDC Form 7-005, Rev. 1/8/2025). That form may be found on the court's website at <https://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.007-005.pdf>.

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRulesAndGeneralOrders>.

Neil C. Evans ("Movant"), counsel for David Wayne Turowski ("Debtor"), the debtor in this chapter 13 case, requests the court approve compensation in the amount of \$1,500.00 for services rendered from May 1, 2024 through June 12, 2024. Doc. #54. This bankruptcy case was dismissed on June 18, 2024 for Debtor's failure to file schedules and other documents timely before Debtor filed a plan. Doc. ##36, 54. Prior to filing Debtor's bankruptcy case, Movant agreed to handle the bankruptcy case for a flat fee of \$1,500.00. Doc. #54; Decl. of Neil C. Evans, Doc. #54. Because no chapter 13 plan was filed prior to Debtor's bankruptcy case being dismissed, Movant did not properly elect to be paid a flat fee pursuant to LBR 2016-1 and is required to file a motion for allowance of compensation and reimbursement of expenses pursuant to 11 U.S.C. §§ 329 and 330. LBR 2016-1(a)(1).

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) pre-petition consulting and fact gathering; (2) preparing and filing initial voluntary petition; (3) filing a notice of stay in Debtor's family law proceedings; (4) preparing for and appearing in Debtor's family law proceeding; and (5) various attempts to communicate with Debtor to complete Schedules and Statements. Doc. #54; Evans Decl., Doc. #54; Decl. of David Turowski, Doc. #63.

There are two issues with the breakdown of time asserted by Movant in the application. First, Movant asserts time in half-hour increments. Professional time in a bankruptcy case is typically billed in one-tenth hour increments, not half-hour increments. Second, Movant spent 4.5 hours of time on May 3, 2024 for "[t]ravel to and attend Family Law Hearing in Bakersfield to assert Stay and obtain Documents and information from Family Law Case[.]" Doc. #54. The court will not consider this time as part of the tasks Movant performed on behalf of this bankruptcy case.

Debtor resided in Poland at the time the bankruptcy case was filed and had difficulties with his email account during that time that precluded Debtor from providing critical information to Movant that Movant needed to complete Debtor's schedules timely and prevent dismissal of the case. Turowski Decl., Doc. #63. Debtor believes that Movant earned the \$1,500.00 paid prior to filing the bankruptcy case, has no issues with the work done in the case, and does not request a return of the money paid. Id.

Based on the application and reducing the request by 4.5 hours, Movant spent 12 hours of time at \$250.00 per hour in relation to this bankruptcy case. Based on Movant's billing rate, if the court finds that 6 hours of the time spent to be reasonably necessary and connected to the bankruptcy case, then the court should approve compensation in the amount of \$1,500.00. After reviewing Movant's application, the court finds that the Movant spent at least 6 hours of time in providing professional services to Debtor with respect to this bankruptcy case that are reasonable, actual, and necessary. The court will approve the motion.

This motion is GRANTED. The court approves compensation in the amount of \$1,500.00 for services rendered in this bankruptcy case.

3. [25-10503](#)-A-13 **IN RE: ASHLEY MONTOYA**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-7-2025 [[14](#)]

JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Continued to May 28, 2025 at 2:00 p.m.

ORDER: The court will issue an order.

Ashley Anne Montoya ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on February 21, 2025. Doc. ##1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because (1) Debtor has failed to provide evidence that the Plan is mathematically feasible, and (2) the value of assets that have non-exempt equity does not meet liquidation requirements. Doc. #14.

This objection will be continued to May 28, 2025. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than May 14, 2025. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Trustee shall file and serve a reply, if any, by May 21, 2025.

If Debtor elects to withdraw this 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 May 21, 2025. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be sustained on the grounds stated in Trustee's objection without a further hearing.

4. [25-10307](#)-A-13 **IN RE: GEORGE/SONJA BRYANT**
[TCS-1](#)

MOTION TO CONFIRM PLAN
3-18-2025 [17]

SONJA BRYANT/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 is DENIED WITHOUT PREJUDICE for improper service.

The certificate of service filed with this motion (Doc. #23) does not comply with Local Rule of Practice 9004-1(c), which requires that all pleadings be signed. Here, the certificate of service is not signed by the declarant. Because the certificate of service on file is not signed, this motion will be denied without prejudice for improper notice.

5. [25-10307](#)-A-13 **IN RE: GEORGE/SONJA BRYANT**
[TCS-1](#)

MOTION TO CONFIRM PLAN
3-18-2025 [24]

SONJA BRYANT/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

On March 18, 2025, the debtors filed a motion to confirm their chapter 13 plan (TCS-1), notice of hearing and support documents. Doc. ##17-23. On March 18, 2025, the debtors filed a duplicate motion to confirm chapter 13 plan and notice of hearing. Doc. ##24-30. The court has deemed Doc. ##24-30 to be duplicates of Doc. ##17-23. Therefore, the duplicate motion, notice of hearing and support documents (Doc. ##24-30) will be DROPPED AS MOOT.

6. [24-11712](#)-A-13 **IN RE: MARK FLORENTINO**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION FOR RELIEF FROM CO-DEBTOR STAY
3-19-2025 [[105](#)]

ATHENE ANNUITY AND LIFE COMPANY/MV
STEPHEN LABIAK/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

7. [24-11712](#)-A-13 **IN RE: MARK FLORENTINO**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-17-2025 [[99](#)]

ATHENE ANNUITY AND LIFE COMPANY/MV
STEPHEN LABIAK/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

8. [23-12314](#)-A-13 **IN RE: DELILA RUCH**
[AP-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
10-30-2024 [[55](#)]

WILMINGTON SAVINGS FUND SOCIETY, FSB/MV
PETER BUNTING/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

9. [25-10538](#)-A-13 **IN RE: VICENTE ALCALA AND JOSEFINA DE RINCON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-1-2025 [[16](#)]

T. O'TOOLE/ATTY. FOR DBT.
\$313.00 FILING FEE PAID 4/9/25

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees now due have been paid.

10. [25-10538](#)-A-13 **IN RE: VICENTE ALCALA AND JOSEFINA DE RINCON**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
4-3-2025 [[19](#)]

LILIAN TSANG/MV
T. O'TOOLE/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to May 14, 2025 at 2:00 p.m.

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

On February 25, 2025, Vicente Rincon Alcala and Josefina Hernandez De Rincon (together, "Debtors") filed a voluntary petition under chapter 13 and a chapter 13 plan ("Plan"). Doc. #1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because the meeting of creditors has yet to be concluded. Doc. #19. Debtors' 341 meeting of creditors has been continued to April 29, 2025 at 3:00 p.m. See court docket entry entered on April 1, 2025.

On April 15, 2025, Debtors responded to Trustee's objection to confirmation stating that the meeting of creditors was continued because the joint debtor failed to provide valid photo identification. Doc. #23. Debtors request that this objection to confirmation be continued to a date after the meeting of creditors has concluded. Id.

Based on Debtors' response to Trustee's objection, the court is inclined to continue the hearing on this objection to May 14, 2025 at 2:00 p.m. to permit the 341 meeting of creditors currently set for April 29, 2025 to be concluded and Trustee's objection resolved.

11. [25-10448](#)-A-13 **IN RE: ERNEST MCKINNEY**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
4-3-2025 [[13](#)]

LILIAN TSANG/MV

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

DISPOSITION: Continued to May 28, 2025 at 2:00 p.m.

ORDER: The court will issue an order.

Ernest Renault McKinney ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on February 18, 2025. Doc. #1, 7. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because (1) the meeting of creditors has not yet concluded, and (2) Debtor has failed to provide tax returns and payment advices. Doc. #13. Debtor's 341 meeting of creditors has been continued to April 29, 2025 at 1:00 p.m. See court docket entry entered on April 1, 2025.

This objection will be continued to May 28, 2025. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than May 14, 2025. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Trustee shall file and serve a reply, if any, by May 21, 2025.

If Debtor elects to withdraw this 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 May 21, 2025. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be sustained on the grounds stated in Trustee's objection without a further hearing.

12. [24-10159](#)-A-13 **IN RE: THOMAS TRUAX**
[DCJ-2](#)

MOTION FOR COMPENSATION FOR DAVID C. JOHNSTON, DEBTORS ATTORNEY(S)
3-31-2025 [[54](#)]

DAVID JOHNSTON/ATTY. FOR DBT.
DISMISSED 06/13/2024;

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part, the court will allow fees in the amount of \$7,240.00.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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 in part and allow fees in the amount of \$7,240.00. 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.

David C. Johnston ("Movant"), counsel for Thomas P. Truax ("Debtor"), the debtor in this chapter 13 case, requests allowance of final compensation in the amount of \$14,520.00 and no reimbursement for expenses for services rendered from November 28, 2023 through February 1, 2025. Doc. #54. Debtor's proposed plan provides for, in addition to \$7,187.00 paid to Movant prior to the filing of this case, \$7,500.00 in attorney's fees to be paid through the plan. Plan, Doc. #19. Debtor's chapter 13 plan was not confirmed. Instead, Debtor's chapter 13 bankruptcy case was dismissed on June 13, 2024, pursuant to the chapter 13 trustee's motion for Debtor's failure to: (1) appear at the scheduled § 341 meeting of creditors; (2) provide Trustee with any requested documents; (3) file all schedules/statements; (4) file tax returns for the year 2023; and (5) make all payments due under the plan. Doc. #32, 36, 37. Debtor did not oppose the motion to dismiss. Doc. #36.

Movant filed two cases on behalf of Debtor, Case No. 23-12796 ("Prior Case") and Case No. 24-10159 ("Instant Case"). Doc. #11. The Prior Case was filed on December 15, 2023 and dismissed on January 16, 2024 due to the failure of Movant to file the remaining documents on behalf of Debtor because Movant was preoccupied by Movant's wife diagnosis of a serious medical condition. Id. Movant then assisted Debtor with filing the Instant Case on January 24, 2024, which, as noted above, was dismissed on June 13, 2024 without opposition from Debtor.

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). 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) consulting and fact gathering to file bankruptcy case; (2) preparing petition, schedules and related pleadings; (3) preparing and filing original plan; (4) preparing and attending 341 meeting of creditors; (5) general case administration; and (6) preparing fee application. Ex. A, Doc. #57. The court has reviewed and analyzed Movant's time entries applying the standard set forth in section 330(1) and determines that fees should be awarded in the amount of \$7,240.00.

There are three areas that warrant reduction in the requested fee. First, Movant charged 11.6 hours with respect to the Prior Case that was dismissed due to Movant's failure to timely file documents. The court will disallow fees in the amount of \$4,640.00 for fees incurred with respect to the Prior Case. Second, it appears to the court that Movant spent excessive time reviewing most proofs of claim. In most cases, Movant billed .2 hours for tasks that, based on the court's review of proofs of claim filed, should have taken half that amount of time to review. Movant also billed .2 hours to review requests for special notice and to calendar deadlines. Based on a review of Movant's billing statement, the court will allow .1 hours for these excessive entries. The court will reduce the amount of fees by 1.7 hours for the excessive time reviewing proofs of claim, reviewing requests for notice and calendaring deadlines, for a further reduction of \$680.00. Finally, pursuant to LBR 2016-1(c)(5), "if the case is dismissed, debtor(s)' counsel shall not be entitled to any further compensation, whether from the Chapter 13 trustee, the debtors or otherwise, for services rendered and/or for costs incurred for the preparation or prosecution of the Chapter 13 case." Here, Movant included billing entries for 4.9 hours of work after the Instant Case was dismissed. Ex. A, Doc. #57. The court will reduce the requested fees by an additional \$1,960.00 for these entries. Based on the above, the court will reduce Movant's fee request by \$7,280.00.

Accordingly, this motion is GRANTED in part. For the above reasons, the court determines that \$7,240.00 in attorneys' fees are reasonable, actual, and necessary, and allows fees in that amount.

13. [24-12359](#)-A-13 **IN RE: JUAN GONZALEZ**
[LGT-2](#)

MOTION TO DISMISS CASE
3-12-2025 [[60](#)]

LILIAN TSANG/MV
JOSHUA STERNBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

14. [22-12163](#)-A-13 **IN RE: TINA GARCIA**
[SL-1](#)

CONTINUED STATUS CONFERENCE RE: OBJECTION TO CLAIM OF CHICAGO TITLE
INSURANCE COMPANY, CLAIM NUMBER 6
4-11-2023 [[44](#)]

TINA GARCIA/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

The court has approved a compromise of this objection to claim. Doc. #144.
Therefore, this status conference will be DROPPED AS MOOT.

15. [25-11067](#)-A-13 **IN RE: ROMELIA FERREL**
[ONA-1](#)

CONTINUED AMENDED MOTION TO IMPOSE AUTOMATIC STAY
4-2-2025 [[10](#)]

ROMELIA FERREL/MV
ONYINYE ANYAMA/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 after the
hearing.

On April 2, 2025, this court granted the ex parte application of Romelia Ferrel
("Debtor"), for an order shortening time to hear Debtor's motion to impose the
automatic stay. Order, Doc. #9. By the motion, Debtor seeks an order imposing
the automatic stay under 11 U.S.C. § 362(c)(4)(B) as to all creditors in this
case. Doc. #10.

This motion was originally set for hearing on April 3, 2025 at 9:00 a.m. pursuant to Local Rule of Practice 9014-1(f)(3). At the initial hearing on the motion, the court granted the motion in part, and the automatic stay was imposed through May 1, 2025. Order, Doc. #16. The court also continued the hearing on the motion to determine whether the automatic stay should be imposed beyond May 1, 2025. Id. On April 11, 2025, Real Time Resolutions, Inc. ("Creditor") filed written opposition to this motion. Doc. #25. On April 17, 2025, Debtor filed a response to Creditor's written opposition. Doc. #34.

With respect to Creditor's assertion that Debtor improperly noticed Creditor, Creditor states that Debtor executed a promissory note payable to ResMAE Mortgage Corporation ("Lender"), secured by Debtor's residence located at 2709 Laurel Dr., Bakersfield, California 93304 ("Property"). Doc. #25. However, the deed of trust that secured the Property was assigned to Creditor on the April 2, 2024, a year before Debtor's bankruptcy case was filed. Id. Thus, it was Creditor, not Lender, that should have been noticed with the motion.

It appears there may have been confusion on the part of Debtor as to who was the holder of the note and deed of trust since the motion was served on Lender instead of Creditor. However, by virtue of filing written opposition, Creditor has actual notice of this motion, and the court will not deny the motion based on improper service on Creditor.

Relevant Facts

Debtor filed this bankruptcy case on April 2, 2025 ("Instant Bankruptcy Case"). Doc. #1. Debtor resides at the Property. Doc. ##1, 7. Debtor filed the Instant Bankruptcy Case to protect the Property from imminent foreclosure. Doc. #34.

Prior to filing this bankruptcy case, Debtor had filed two separate cases within the last year that were dismissed: (1) Case No. 25-10218 filed on January 29, 2025 and dismissed on February 10, 2025 ("First Bankruptcy Case"); and (2) Case No. 25-10666 filed on March 4, 2025 and dismissed on March 17, 2025 ("Second Bankruptcy Case") (collectively, "Prior Cases"). Doc. #7. The Prior Cases were filed by Debtor in pro per after Debtor employed a document preparation company, Progressive Elite Group ("PEG"), to prepare her petition and supporting documents. Doc. #7. Debtor believed that PEG was a law firm and relied on PEG to resolve any filing deficiencies to prevent her Prior Cases from being dismissed. Id. However, the Prior Cases were dismissed for the failure of Debtor to timely file complete documents. Case No. 25-10218, Doc. #8; Case No. 25-10666, Doc. #10.

Legal Authority

The motion seeks relief pursuant to 11 U.S.C. § 362(c)(4)(B), requesting the court impose the automatic stay in this bankruptcy case. Congress provides in 11 U.S.C. § 362(c)(4) that no automatic stay goes into effect when the debtor has had two bankruptcy cases pending that were dismissed within one year of the filing of a subsequent case. However, a debtor may request that the court impose the automatic stay within 30 days after the filing of the third bankruptcy case only if the debtor demonstrates that the filing of the third bankruptcy case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4).

In determining if good faith exists, the court considers the totality of the circumstances. In re Elliot-Cook, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. See, e.g., In re Jackola, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing Elliott-Cook, 357 B.R. at 815-16). Courts consider many factors – including

those used to determine good faith under §§ 1307(c) and 1325(a) – but the two basic issues to determine good faith under § 362(c)(3) are: (i) why the previous case failed; and (ii) what has changed so that the present case is likely to succeed. Elliot-Cook, 357 B.R. at 814-15.

Analysis

Debtor filed the two Prior Cases that were pending and dismissed in the year prior to the April 2, 2025 filing of the Instant Bankruptcy Case. Therefore, 11 U.S.C. § 362(c)(4) prevented the stay pursuant to 11 U.S.C. § 362 from going into effect automatically in the Instant Bankruptcy Case. Relief pursuant to 11 U.S.C. § 362(c)(4)(B) must be requested within thirty (30) days from the filing of the case in which the relief is sought. Here, the Instant Bankruptcy Case was filed on April 2, 2025. Doc. #1. The motion to impose the stay also was filed on April 2, 2025, so it is timely.

Turning to the determination of whether the Instant Bankruptcy Case was filed in good faith as to the creditors to be stayed, Debtor asserts she filed bankruptcy in order to save the Property from foreclosure. Doc. #10; Decl. of Romelia Ferrel, Doc. #14. Debtor mistakenly believed that PEG was a law firm and was unaware that the Prior Cases were filed in pro per and what was required to proceed with a successful bankruptcy. Ferrel Decl., Doc. #14. Debtor has now retained a bankruptcy attorney to aid in the Instant Bankruptcy Case and provide the necessary guidance for to Debtor to successfully complete the Instant Bankruptcy Case. Id.

Debtor has not acquired any new debt since her Prior Cases were dismissed. Ferrel Decl., Doc. #14. Debtor also has income as a caretaker, from Social Security, and receives contributions from her daughter and ex-husband whom Debtor takes care of. Id.; Decl. of John R. Vallejo, Doc. #36; Decl. of Valerie F. Villalobos, Doc. #37. Because there is a motive to save Debtor's Property from foreclosure, Debtor believes there is no indication that Debtor engaged in any type of scheme or other operation to abuse the bankruptcy process. Doc. #10; Ferrel Decl., Doc. #14.

In its opposition, Creditor states Debtor has not had any change in financial circumstances since filing the Prior Cases. Doc. #25. Rather, the only change in circumstances is that Debtor retained an attorney to prosecute this case, which is not enough to rebut the presumption of bad faith. Id. Creditor believes there is still a lack of financial information provided from Debtor to show Debtor's plan is feasible. Id. Specifically, Creditor points out that the note underlying Creditor's security interest on the Property matured on December 1, 2021, and Debtor would be required to pay the total claim over the duration of the bankruptcy case, which does not appear would be feasible for Debtor. Id.

In Debtor's response, Debtor reiterates that she did not file the Prior Cases to defraud her creditors. Doc. #34. Debtor claims she served Lender instead of Creditor with the motion because Debtor mistakenly thought Lender was still the lender on the Property. Id. Further, Debtor relied on the adviser of PEG in the Prior Cases to prepare Debtor's bankruptcy schedules properly, follow up with Debtor for updates, and negotiate with lenders to save the Property, which PEG did not do. Id. Lastly, Debtor's plan was filed on an emergency basis because of the trustee sale set for April 9, 2025, and there was not enough time for Debtor's attorney in the Instant Bankruptcy Case to file a complete petition, schedules or plan. Id. Debtor will be providing additional proof of income to support the feasibility of her plan. Id. Finally, Debtor is in the process of listing the Property for sale, which Debtor believes will provide sufficient income to pay off her creditors. Id.

To date, Debtor has filed amended schedules as well as a chapter 13 plan that now lists Creditor in Class 1. Doc. #27; Plan, Doc. #31. It appears that financial circumstances were not the reason that Debtor's Prior Cases were dismissed. Instead, the Prior Cases were dismissed for Debtor's failure to timely file documents, which should be mitigated because Debtor filed the Prior Cases in pro per while believing that she was represented by counsel and is now actually represented by counsel. Moreover, Debtor is in the process of listing the Property for sale, which should pay Creditor in full. The court finds that Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the Prior Cases for the court to further impose the automatic stay as to Creditor and all other creditors who have notice of this motion to allow Debtor to proceed with a sale of the Property and her confirmation of a chapter 13 plan.

Conclusion

Accordingly, the motion will be GRANTED, and the automatic stay is imposed beyond May 1, 2025 for all purposes and as to all parties who have notice of this motion, including Creditor, unless terminated by operation of law or further order of this court.

16. [20-12069](#)-A-13 **IN RE: SCOTT/SARINA DUTEY**
[TCS-10](#)

MOTION TO MODIFY PLAN
3-15-2025 [[184](#)]

SARINA DUTEY/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DISMISSED 3/24/25

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing the bankruptcy case was entered on March 24, 2025. Doc. #191. Therefore, the motion to modify the plan will be DENIED AS MOOT.

17. [24-13287](#)-A-13 **IN RE: JOHN/NANCY ALVA**
[SLL-2](#)

CONTINUED MOTION TO CONFIRM PLAN
2-6-2025 [[43](#)]

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

NO RULING.

18. [24-13289](#)-A-13 **IN RE: JORGE PERALES**
[DMG-1](#)

CONTINUED MOTION TO CONFIRM PLAN
2-3-2025 [[46](#)]

JORGE PERALES/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This motion to confirm plan is OVERRULED AS MOOT. The debtor filed a second amended plan on April 17, 2025 (DMG-2, Doc. #67), with a motion to confirm the modified plan set for hearing on June 4, 2025 at 9:00 a.m. Doc. ##66-70.

19. [25-10594](#)-A-13 **IN RE: SALATIEL/MARIA RUIZ**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-7-2025 [[12](#)]

JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Continued to May 28, 2025 at 2:00 p.m.

ORDER: The court will issue an order.

Salatiel Ruiz and Maria S. Ruiz (together, "Debtors") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on February 28, 2025. Doc. ##1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because (1) the meeting of creditors has not yet concluded, and (2) Debtors have failed to provide any of the required documents including, but not limited to proof of identification, proof of Social Security Number, pay advices for the 60 days prior to filing, most recent filed tax returns, proof of state disability income, and Class 1 checklist. Doc. #12.

This objection will be continued to May 28, 2025. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtors shall file and serve a written response no later than May 14, 2025. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtors' position. Trustee shall file and serve a reply, if any, by May 21, 2025.

If Debtors elect to withdraw this 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 May 21, 2025. If Debtors do not timely file a modified plan or a written response, this objection to confirmation will be sustained on the grounds stated in Trustee's objection without a further hearing.

11:00 AM

1. [23-11803](#)-A-7 **IN RE: VALERIE RODRIGUEZ**
[23-1051](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-26-2024 [[46](#)]

RODRIGUEZ V. DEPT OF ED EDFINANCIAL ET AL
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar

NO ORDER REQUIRED.

The court has granted the motion to dismiss defendant Navient Solutions, LLC by final ruling, calendar matter #2 below. Based on the court's records, defendant Dept of Ed EdFinancial was not served with the complaint. On the record at one of the status conferences held in this adversary proceeding, the plaintiff agreed that Dept of Ed EdFinancial could be dismissed from this adversary proceeding. The other two defendants, U.S. Department of Education and Education Credit Management Corporation, have each stipulated to judgments with the plaintiff. Doc. ##40, 79. Accordingly, this adversary proceeding has been resolved as to all defendants. This status conference is dropped from calendar, and this adversary proceeding may be administratively closed when appropriate.

2. [23-11803](#)-A-7 **IN RE: VALERIE RODRIGUEZ**
[23-1051](#) [DW-1](#)

MOTION TO DISMISS NAVIENT SOLUTIONS, LLC AND/OR MOTION FOR SUMMARY JUDGMENT
3-6-2025 [[84](#)]

RODRIGUEZ V. DEPT OF ED EDFINANCIAL ET AL
DENNIS WINTERS/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

Defendant Navient Solutions, LLC ("NSL") moves to dismiss NSL as a defendant in this adversary proceeding or, alternatively, for summary judgment, on the grounds that (1) NSL is not a real party in interest in this adversary proceeding, and (2) there is no basis for NSL to return to the plaintiff \$4,250.00 that the plaintiff paid on student loans for which NSL was only the servicer.

Relevant Background

Plaintiff Valerie Rendon Rodriguez ("Debtor") filed a chapter 7 bankruptcy petition on August 17, 2023.¹ Case No. 23-11803, Doc. #1. On November 20, 2023, Debtor initiated this adversary proceeding against Dept of Ed EdFinancial, U.S. Department of Education ("Education"), and NSL seeking a determination of dischargeability of two sets of student loan debts. Doc. #1. The first set of loans were disbursed to Debtor between October 1993 and January 1995 (collectively, "Stafford Loans"). Ex. 4-D, Doc. #46. The second set of loans were disbursed to Debtor between 2018 and 2021 (collectively, "Federal Loans"). Doc. #1. On May 30, 2024, the court entered judgment discharging the Federal Loans based on a stipulation between Debtor and Education. Doc. #40.

With respect to the Stafford Loans, on December 7, 2023, NSL filed an answer stating that NSL was the servicer on the Stafford Loans and not the proper party to be sued by Debtor. Doc. #7. Rather, Educational Credit Management Corporation ("ECMC") was the guarantor on the Stafford Loans and, pursuant to the Code of Federal Regulations, 34 CFR 682.402, et seq., upon the filing of a complaint seeking discharge in bankruptcy of a student loan such as Debtor's Stafford Loans, the Stafford Loans must be transferred to ECMC, which NSL had commenced. Id.

On July 26, 2024, Debtor filed an amended complaint ("Amended Complaint") adding ECMC as a defendant to this adversary proceeding and requesting for the first time that Debtor be reimbursed \$4,250.00 for monies that Debtor had paid towards the Stafford Loans. Doc. #46. On February 27, 2025, the court entered judgment discharging the Stafford Loans based on a stipulation between Debtor and ECMC. Doc. #79.

At a status conference held on February 27, 2025, Debtor confirmed that she still wanted to proceed with her claims against NSL as set forth in the Amended Complaint. Court Audio, Doc. #80. The court ordered NSL to respond to the Amended Complaint by March 13, 2025. Doc. #83. On March 6, 2025, NSL filed this motion to dismiss.

Applicable Law

Rule 12(b) is made applicable to this proceeding pursuant to Federal Rule of Bankruptcy Procedure 7012.

"A motion under Rule 12(b)(6) tests the formal sufficiency of the statement of the claim for relief." Greenstein v. Wells Fargo Bank, N.A. (In re Greenstein), 576 B.R. 139, 171 (Bankr. C.D. Cal. 2017). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007));

¹ The court, on its own, takes judicial notice of pleadings filed in Debtor's bankruptcy case. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015).

Rule 8(a). "In considering a Fed. R. Civ. P. 12(b)(6) motion to dismiss for failure to state a claim for relief, the court accepts as true all material facts alleged in the complaint and draws all reasonable inferences in favor of the plaintiff. The motion to dismiss is granted only if no set of facts can be established to entitle the plaintiff to relief." Enron Corp. v. Credit Suisse First Boston Int'l (In re Enron Corp.), 328 B.R. 58, 64 (Bankr. S.D.N.Y. 2005) (citations omitted).

"[A] pro se litigant is not excused from knowing the most basic pleading requirements." Am. Ass'n of Naturopathic Physicians v. Hayhurst, 227 F.3d 1104, 1107-08 (9th Cir. 2000). "[I]n applying the foregoing standards [for ruling on Rule 12(b)(6) motions] enunciated by the Supreme Court, a federal court must construe a pro se complaint liberally, and hold it to less stringent standards than pleadings drafted by lawyers." Greenstein, 576 B.R. at 171 (citing Hebbe v. Pliler, 611 F.3d 1202, 1205 (9th Cir. 2010)).

Legal Analysis

Here, the only remaining claim for relief asserted by Debtor in the Amended Complaint is a request that Debtor be reimbursed \$4,250.00 for monies that Debtor had paid towards the Stafford Loans. Doc. #46. According to the Amended Complaint, the debt for which Debtor seeks reimbursement from NSL was disbursed between 1993 and 1995. Id. Debtor seeks from NSL reimbursement for consecutive payments made for twenty-eight months but provides no legal basis for the return of such funds, and the court knows of no such basis. Simply because Debtor wants a refund of principal payments made on student loans Debtor concedes she borrowed are not facts that would entitle Debtor to a claim for relief against NSL. The court knows of no such facts that would support a claim for relief against NSL, and Debtor has not opposed NSL's motion. Thus, the court will dismiss NSL without further leave to amend the Amended Complaint.

Conclusion

Accordingly, the motion to dismiss is granted. NSL is dismissed from this adversary proceeding.

3. [22-10825](#)-A-7 **IN RE: JAMIE/MARIA GARCIA**
[22-1018](#) [PWG-3](#)

MOTION BY PHILLIP W. GILLET JR. TO WITHDRAW AS ATTORNEY
3-18-2025 [\[156\]](#)

AGRO LABOR SERVICES, INC. ET AL V. GARCIA ET AL
PHILLIP GILLET/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if record sufficiently supplemented.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the defendants 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). Therefore, the defaults of the above-mentioned parties in interest are entered. Because the court requires additional information before granting the motion, the matter will proceed as scheduled.

Phillip W. Gillet Jr. ("Movant"), counsel for the defendants and chapter 7 debtors Jamie Rene Garcia, Maria Cruz Garcia and Adela Garcia (together, "Defendants"), moves to withdraw as Defendants' attorney of record. Doc. #156. Movant seeks withdrawal as attorney of record in Defendants' adversary proceeding. Movant's withdrawal will leave Defendants unrepresented by counsel.

LBR 2017-1(e) states that "an attorney who has appeared may not withdraw leaving the client *in propria persona* without leave of court upon noticed motion and notice to the client and all other parties who have appeared." Withdrawal is governed by the California Rules of Professional Conduct. LBR 2017-1(e).

Pursuant to California Rules of Professional Conduct Rule 1.16, formerly Rule 3-700, a lawyer may withdraw from representing a client if the client breaches a material term of an agreement with the lawyer and the lawyer has given the client reasonable warning of withdrawal, if a continuation of the representation is likely to result in a violation of the rules, if the client renders it unreasonably difficult for the lawyer to carry out the representation effectively, or if other good cause for withdrawal exists. Rules Prof. Conduct 1.16(b), <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules>.

Movant submits that Defendants accuse Movant of lack of representation. Gillet Decl., Doc. #158. Movant also testifies that Defendants' accusations of professional misconduct has created a conflict of interest. *Id.* Compliance with California Rule of Professional Conduct 1.16(e) requires Movant to turn over any client materials and refund any part of a fee or expense paid in advance that the lawyer has not earned or incurred. However, Movant states that Defendants have paid no money to Movant since retention on December 19, 2022, and Defendants have not responded to Movant's emails regarding attorney's fees owed. *Id.* It appears that Movant's withdrawal will cause no undue prejudice to Defendants, and Movant has demonstrated cause for withdrawal.

LBR 2017-1(e) also requires the attorney seeking withdrawal to "provide an affidavit stating the current or last known address" of the client and "the efforts made to notify the client of the motion to withdraw." LBR 2017-1(e). Movant has not conformed with this aspect of LBR 2017-1(e). Specifically, Movant's motion and declaration do not provide the current or last known address of Defendants. Doc. #156; Decl. of Phillip W. Gillet, Doc. #158. In addition, Movant's declaration does not state the efforts Movant made to notify Defendants of Movant's current intentions to withdraw as Defendants' attorney besides serving Defendants with a previously filed motion to withdraw on October 17, 2024. Gillet Decl., Doc. #158. At the hearing, the court will permit Movant to confirm on the record the current or last known address of Defendants as well as supplement the record with respect to Movant's efforts to notify Defendants of Movant's intentions to withdraw as Defendant's attorney before determining whether such efforts are sufficient to grant the motion. The certificate of service filed with this motion shows that Defendants received notice via U.S. mail. Doc. #160. Service was also made upon the plaintiff's counsel. *Id.*

Accordingly, subject to Movant sufficiently supplementing the record at the hearing, this motion will be GRANTED.

4. [24-13229](#)-A-7 **IN RE: ADRIAN GUERRA**
[25-1007](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
2-21-2025 [[1](#)]

GUERRA V. INTERNAL REVENUE SERVICE ET AL
NANCY KLEPAC/ATTY. FOR PL.
REISSUED SUMMONS TO 5/14/25

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on April 15, 2025. Doc. #7.

5. [25-10343](#)-A-12 **IN RE: BART FLORES**
[25-1008](#) [CAE-1](#)

STATUS CONFERENCE RE: NOTICE OF REMOVAL
2-25-2025 [[1](#)]

FLORES REAL PROPERTY INVESTMENTS, LLC ET AL V.

NO RULING.

6. [25-10343](#)-A-12 **IN RE: BART FLORES**
[25-1008](#) [CAE-2](#)

ORDER TO SHOW CAUSE
3-31-2025 [[17](#)]

FLORES REAL PROPERTY INVESTMENTS, LLC ET AL V.

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the missing corporate disclosure statement was filed on April 1, 2025. Doc. #21. Therefore, this order to show cause will be VACATED.

7. [25-10343](#)-A-12 **IN RE: BART FLORES**
[25-1008](#) [CAE-3](#)

ORDER TO SHOW CAUSE
3-31-2025 [[19](#)]

FLORES REAL PROPERTY INVESTMENTS, LLC ET AL V.

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the missing corporate disclosure statement was filed on April 1, 2025. Doc. #22. Therefore, this order to show cause will be VACATED.

8. [25-10343](#)-A-12 **IN RE: BART FLORES**
[25-1008](#) [FW-1](#)

MOTION FOR REMAND
3-27-2025 [[6](#)]

FLORES REAL PROPERTY INVESTMENTS, LLC ET AL V.
PETER SAUER/ATTY. FOR MV.

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 the hearing.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on April 10, 2025. Doc. #29. The moving party timely replied on April 17, 2025. Doc. #39. This matter will proceed as scheduled.

Flores Real Property Investments, LLC ("Flores Investments"), Lemoore 198 Investors, LLC ("Lemoore 198"), Tracy Ann Garner ("Garner") and Theodore A. Amaro ("Amaro," and together with Flores Investments, Lemoore 198 and Garner, "Plaintiffs") move the court, pursuant to 28 U.S.C. § 1452(b), to remand to Kings County Superior Court litigation entitled Flores Real Property Investments, LLC et al. v. Barton Joseph Flores and Does 1 through 20, Case No. 25CU0024, Kings County Superior Court ("State Court Action"), which Barton Joseph Flores ("Debtor") removed to this court on February 25, 2025. Doc. #6.

The court has considered the motion, opposition, reply and related pleadings. After due consideration, the motion for remand filed by Plaintiffs is GRANTED based on the following.

Relevant Factual Background

According to the complaint in the State Court Action, Debtor and Garner each own 45% of Flores Investments and, in approximately July 2023, assigned each of

their 45% interests in Lemoore 198 to Flores Investments. Complaint, Doc. #3. Amaro owns 10% of Flores Investments and Lemoore 198. Id. Garner is the current managing member of both Flores Investments and Lemoore 198. Id. Debtor was removed as a manager of Flores Investments by a majority vote of the members on August 18, 2024. Id. The primary asset of Flores Investments and Lemoore 198 is real property consisting of a pistachio orchard and adjoining property with farm buildings comprising approximately 964 acres located in Kings County at 27th Avenue and Highway 198, adjacent to the Lemoore Naval Air Station (the "Property"). Id.

Pre-petition, on January 3, 2025, Garner and Amaro voted in favor of accepting an offer to purchase the Property from a well-known and successful pistachio grower. Complaint, Doc. #3. The Property was in escrow as of January 17, 2025, with an escrow closing date of February 10, 2025. Id.

On January 17, 2025, Plaintiffs commenced the State Court Action seeking injunctive and declaratory relief against Debtor regarding Debtor's actions with respect to the operation and sale of the Property. On January 22, 2025, Kings County Superior Court issued a temporary protective order following an ex parte hearing ("TPO") that prohibited Debtor and all persons acting on Debtor's behalf, including but not limited to Keith Freitas, from interfering (1) in any way with the pending sale of the Property, (2) with the farming and any other day-to-day activities necessary in the good faith judgment of Garner and Amaro to operate the Property until the Property is sold to Mike Woolf Farming, and (3) with any inspections of the Property that Mike Woolf Farming deems necessary and as Mike Woolf Farming is permitted to do under the purchase agreement. TPO, Doc. #3. In addition, Debtor and anyone acting on Debtor's behalf is not permitted to enter the Property until the Property has been sold to Mike Woolf Farming. Id. On February 4, 2025, after considering Debtor's opposition, Kings County Superior Court entered a preliminary injunction order prohibiting the same actions as were prohibited in the TPO. Ex. C, Doc. #13.

According to Plaintiffs, on February 5, 2025, Debtor filed an amended cross complaint in the State Court Action for (i) breach of fiduciary duty and (ii) declaratory relief pertaining to interpretation of Debtor's rights under the operating agreement of Flores Investments. Motion, Doc. #6.

Debtor filed his chapter 12 bankruptcy case on February 6, 2025.² Case No. 25-10343, Doc. #1. In Debtor's bankruptcy case, Debtor has sought to reject the purchase agreement between Flores Investments and Lemoore 198 and Mike Woolf Farming ("Purchase Agreement"). Case No. 25-10343, Doc. #33. A hearing on that motion is set for April 23, 2025. Case No. 25-10343, Doc. #40. On April 21, 2025, the court posted a pre-hearing disposition in which this court tentatively rules to deny Debtor's motion to reject the Purchase Agreement. https://www.caeb.uscourts.gov/documents/Judges/PreHearingDispositions/0423_168F_2025.pdf

Applicable Legal Standard

28 U.S.C. § 1452(b) provides in relevant part that a court to which a "claim or cause of action is removed may remand such claim or cause of action on any equitable ground." The "any equitable ground" remand standard is an unusually broad grant of authority." McCarthy v. Prince (In re McCarthy), 230 B.R. 414, 417 (B.A.P. 9th Cir. 1999). In the Ninth Circuit, courts consider the following factors in determining whether to remand a case on equitable grounds:

² The court, on its own, takes judicial notice of pleadings filed in Debtor's bankruptcy case. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015).

(1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention; (2) extent to which state law issues predominate over bankruptcy issues; (3) difficult or unsettled nature of applicable law; (4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding; (5) jurisdictional basis, if any, other than § 1334; (6) degree of relatedness or remoteness of proceeding to main bankruptcy case; (7) the substance rather than the form of an asserted core proceeding; (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court; (9) the burden on the bankruptcy court's docket; (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties; (11) the existence of a right to a jury trial; (12) the presence in the proceeding of nondebtor parties; (13) comity; and (14) the possibility of prejudice to other parties in the action.

Stichting Pensioenfonds ABP v. Countrywide Fin. Corp., 447 B.R. 302, 311 (C.D. Cal. 2010) (citing Citigroup, Inc. v. Pac. Inv. Mgmt. Co. (In re Enron Corp.), 296 B.R. 505, 508 n.2 (C.D. Cal. 2003)). "[A]ny one of the relevant factors may provide a sufficient basis for equitable remand." Id.

Legal Analysis

Applying the fourteen factors, the court finds these factors support equitable remand of the State Court Action as follows:

1. Effect on Administration of the Estate if Court Remands: Contrary to Debtor's assertions, permitting the State Court Action to proceed in Kings County Superior Court will not affect administration of Debtor's bankruptcy case. Debtor asserts that the Property is necessary for Debtor's reorganization. However, the Property is not owned by Debtor, so Debtor cannot use the Property to reorganize. Moreover, Plaintiffs obtained a preliminary injunction pre-petition, the enforcement of which likely does not violate the automatic stay. See In re Cohoes Indus. Terminal, Inc., 62 B.R. 369, 378 (Bankr. S.D.N.Y.), aff'd, 70 B.R. 214 (S.D.N.Y. 1986), aff'd, 831 F.2d 283 (2d Cir. 1987) ("a state court pre-petition order which does not relate to the collection of pre-petition claims or property of the estate may be enforced by contempt proceedings against the debtor and its officers in order to vindicate the dignity of the state court without violating the automatic stay"). This factor weighs in favor of equitable remand.
2. Extent to Which State Law Issues Predominate: Here, there are no bankruptcy law matters asserted in the State Court Action. This factor weighs in favor of equitable remand.
3. Difficulty or Unsettled Nature of Applicable Law: There does not appear to be any difficult or unsettled applicable law with respect to the State Court Action. This factor weighs against equitable remand.
4. Presence of Pending Related Proceeding: If remanded, the State Court Action would be pending in the California state court subject to any applicable provision of the automatic stay. This factor weighs in favor of equitable remand.
5. The Jurisdictional Basis Other than 28 U.S.C. § 1334: The only basis for jurisdiction appears to be 28 U.S.C. § 1334. This factor weighs in favor of equitable remand.

6. Degree of Relatedness or Remoteness of the Proceeding to the Bankruptcy Case: The Property that is the subject of the State Court Action is not property of Debtor so there is minimal relatedness to Debtor's bankruptcy case. This factor weighs in favor of equitable remand.
7. Substance of the Asserted Core Proceeding: To the extent Debtor claims the State Court Action involves core proceedings because its resolution concerns estate administration and confirmation of plans, Debtor is mistaken. The State Court Action involves the sale of real property to a non-debtor entity that is owned by a non-debtor entity that is managed and controlled by non-debtor managers. Notwithstanding Debtor's assertions to the contrary, the bankruptcy estate has no authority to manage Flores Investments or Lemoore 198 or control the disposition of their assets. This factor weighs in favor of equitable remand.
8. Feasibility of Severing State Law Claims from Core Bankruptcy Matters: The claims asserted by Plaintiffs in the State Court Action - enjoining Debtor from interfering with the sale of non-estate assets and determining Debtor's rights under a limited liability operating agreement - have no relationship to any core bankruptcy matters. To the extent Plaintiffs are required to seek sanctions against Debtor in the State Court Action for violations of the TPO and/or preliminary injunction, such actions can proceed other than the enforcement of any monetary sanctions, which can be severed without complicating the administration of Debtor's bankruptcy estate. This factor weighs in favor of equitable remand.
9. Burden of Bankruptcy Court's Docket: Debtor has expressly refused to consent to the entry of final orders or judgments by this court. Doc. #1. This court adjudicating the State Court Action when Debtor has expressly refused to consent to the entry of final orders or judgments by this court would be a burden on this court's docket because any final orders of this court would need to be reports and recommendations to the district court. This factor weighs in favor of equitable remand.
10. Likelihood of Forum Shopping: Because Debtor filed his bankruptcy case shortly after receiving unfavorable rulings in the State Court Action and removed the State Court Action to this court, it appears Debtor may be forum shopping to have this court address anew issues already determined in the State Court Action. This factor weighs in favor of equitable remand.
11. Existence of Right to Jury Trial: Plaintiffs have demanded that all factual and legal issues raised by the complaint in the State Court Action be tried by jury to the extent permitted by law. This factor weighs in favor of equitable remand.
12. Presence of Non-Debtor Parties in Related Proceeding: All four Plaintiffs are non-debtor parties in the State Court Action. This factor weighs in favor of equitable remand.
13. Comity: Comity dictates that Kings County Superior Court should have the right to adjudicate the exclusively state law claims asserted in the State Court Action involving a sale transaction of real property located in California between non-debtor entities. This factor weighs in favor of equitable remand.
14. Possibility of Prejudice to Other Parties in the Action: Retention of the State Court Action could prejudice the involuntarily removed non-debtor Plaintiffs who seek to close a sale of real property that is not

owned by Debtor and in which Kings County Superior Court has issued a preliminary injunction prohibiting Debtor, among other things, from interfering with the sale. Moreover, because Debtor has expressly refused to consent to the entry of final orders or judgments by this court, any final orders of this court would need to be reports and recommendations to the district court that could delay final resolutions in this adversary proceeding if remand is not granted. This factor weighs in favor of equitable remand.

Given that nearly all of the fourteen factors weigh in favor of this court remanding the State Court Action, the court finds that cause exists to remand the State Court Action to Kings County Superior Court.

Conclusion

Accordingly, the motion for remand filed by Plaintiffs will be granted. The State Court Action will be remanded to Kings County Superior Court.

9. [25-10343](#)-A-12 **IN RE: BART FLORES**
[25-1008](#) [FW-2](#)

MOTION FOR ORDER TO SHOW CAUSE WHY DEBTOR AND HIS AGENTS SHOULD NOT BE HELD IN CONTEMPT OF COURT
3-27-2025 [[10](#)]

FLORES REAL PROPERTY INVESTMENTS, LLC ET AL V.
PETER SAUER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Abstain without prejudice.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on April 10, 2025. Doc. #27. The moving party timely replied on April 17, 2025. Doc. #41. This matter will proceed as scheduled.

As a procedural matter, this motion seeks an order to show cause as to the debtor, but the motion was not served on the debtor. The court interprets Federal Rule of Bankruptcy Procedure ("Rule") 9014 to apply to this type of motion. Rule 9014(b) requires this motion be served "in the manner provided for service of a summons and complaint by Rule 7004." Rule 7004(b)(9) requires service on "the debtor, after a petition has been filed by or served upon a debtor, and until the case is dismissed or closed-by mailing the copy to the address shown on the debtor's petition or the address the debtor specifies in a filed writing[.]" Here, the debtor was not served by first class mail; only the debtor's counsel was served electronically, which complies with Rule 7004(g) but not Rule 7004(b)(9). However, the debtor filed timely written opposition and did not raise the issue of improper service, so the court deems service sufficient on the debtor under the circumstances.

Flores Real Property Investments, LLC ("Flores Investments"), Lemoore 198 Investors, LLC ("Lemoore 198"), Tracy Ann Garner and Theodore A. Amaro

(collectively, "Plaintiffs") move the court for an order to show cause as to why Barton Joseph Flores ("Debtor") and his agents should not be held in contempt of court for violating a temporary restraining order and preliminary injunction issued in litigation entitled Flores Real Property Investments, LLC et al. v. Barton Joseph Flores and Does 1 through 20, Case No. 25CU0024, Kings county Superior Court ("State Court Action"), which Debtor removed to this court on February 25, 2025. Doc. #10.

Federal bankruptcy jurisdiction contains a broad grant of discretion to abstain "in the interest of justice, or in the interest of comity with State courts or respect for State law[.]" 28 U.S.C. § 1334(c)(1). In the tentative ruling for calendar matter #8 above, this court intends to remand the State Court Action to Kings County Superior Court. Because the two orders that are the subject of this motion were issued by Kings County Superior Court prior to the State Court Action being removed to this court and because this court intends to remand the State Court Action to Kings County Superior Court, this court intends to abstain from deciding this motion without prejudice to Plaintiffs seeking the relief requested in this motion in Kings County Superior Court once the State Court Action has been remanded.

10. [24-12566](#)-A-7 **IN RE: CALIFORNIA CITRUS MARKETING, INC.**
[24-1052](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-27-2024 [\[1\]](#)

CONTRERAS FARMS, LLC V. CALIFORNIA CITRUS MARKETING,
MICHAEL SMITH/ATTY. FOR PL.
DISMISSED 3/20/25; CLOSED 4/7/25

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on March 20, 2025. Doc. #31.

11. [24-10680](#)-A-7 **IN RE: CENTRAL CALIFORNIA CARTAGE CO, INC**
[24-1055](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-2-2024 [\[1\]](#)

EDMONDS V. VALLEY PACIFIC PETROLEUM SERVICES, INC.
ANTHONY JOHNSTON/ATTY. FOR PL.
DISMISSED 4/15/25

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on April 15, 2025. Doc. #20.