

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, May 5, 2022
Place: Department A – 510 19th Street
Bakersfield, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 631, courthouses for the Eastern District of California were reopened to the public effective June 14, 2021.

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [22-10300](#)-A-13 **IN RE: RUDY LOPEZ**
[JGB-1](#)

MOTION TO CONFIRM PLAN
4-8-2022 [[16](#)]

RUDY LOPEZ/MV
JAMES BEIRNE/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on April 28, 2022. Doc. #32.

2. [22-10300](#)-A-13 **IN RE: RUDY LOPEZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
4-7-2022 [[13](#)]

JAMES BEIRNE/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

On April 28, 2022, the moving party withdrew the motion to confirm the plan. Doc. #32. Therefore, this objection to the plan will be OVERRULED AS MOOT. A new motion to confirm plan has been filed and set for hearing on June 9, 2022. Docs. #25, 26.

3. [21-10716](#)-A-13 **IN RE: VINOD SAHNI**
[DWE-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-23-2022 [69]

WELLS FARGO BANK, N.A./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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 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 movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Wells Fargo Bank N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 2525 Jewetta Avenue, Bakersfield, California 93312 ("Property"). Doc. #69. No opposition was filed.

Section 362(d)(1) of the Bankruptcy Code allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay. Vinod Kumar Sahni ("Debtor") executed a promissory note secured by a deed of trust in favor of Movant. Doc. #73. The contractual default through March 2022 is \$84,125.10. Id. The arrears owed to Movant are not being paid through Debtor's proposed plan. Doc. #69. While Debtor has been making post-petition payments to Movant, Debtor has not made any payments to Movant since February 1, 2022. Ex. E, Doc. #74.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

While Movant requests that the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) be waived, the court will deny that request because (1) Movant has over \$25,000 in equity based on Movant's evidence filed in support of the motion and (2) based on representations made by Debtor's counsel on the record at a hearing held on April 21, 2022 (Doc. #87) and a status report filed on April 28, 2022 (Doc. #91), (i) the real property that secures Movant's loan is subject to a pending sale, (ii) the sale will pay Movant in full, and (iii) escrow on the sale is likely to close the first week of May.

4. [21-10716](#)-A-13 **IN RE: VINOD SAHNI**
[RSW-1](#)

CONTINUED HEARING RE: MOTION TO CONFIRM PLAN
7-1-2021 [\[29\]](#)

VINOD SAHNI/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

5. [19-13020](#)-A-13 **IN RE: MOISES/LUCINA OCAMPO**
[LKW-5](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
4-12-2022 [\[81\]](#)

LEONARD WELSH/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 the 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. 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.

Law Offices of Leonard K. Welsh ("Movant"), counsel for Moises Moreno Ocampo and Lucina Zepeda Ocampo (together, "Debtors"), the debtors in this chapter 13 case, requests allowance of final compensation in the amount of \$2,550 and reimbursement for expenses in the amount of \$54.86 for services rendered July 1, 2020 through March 31, 2022. Doc. #81. Debtors' confirmed plan provides for \$15,000.00 in attorney's fees to be paid through the plan in addition to a \$3,500 pre-petition retainer. Plan, Doc. #15, 48. Two prior fee applications have been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the combined amount of \$5,775.50 and reimbursement for

expenses totaling \$347.40. Orders, Doc. ##57, 75. Debtors reviewed the third and final fee application and have no objection. Doc. #83.

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) communicating with Debtors regarding status of the bankruptcy case and fiscal year reporting; (2) preparing and filing fee applications; and (3) preparing for discharge and case closing. Doc. #85. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, in addition to compensation requested by this motion in the amount of \$2,550 and reimbursement for expenses in the amount of \$54.86 to be paid in a manner consistent with the terms of the confirmed plan.

6. [22-10228](#)-A-13 **IN RE: ELIAS GARCIA CAMACHO**
[MWP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WEST COAST CAPITAL GROUP, INC.
3-23-2022 [\[25\]](#)

WEST COAST CAPITAL GROUP, INC./MV
MARTIN PHILLIPS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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.

The debtor filed a chapter 13 plan ("Plan") on March 4, 2022. Doc. #12. West Coast Capital Group Inc. ("Creditor") objects to confirmation of the Plan on the grounds that: (1) the Plan does not provide for the curing of the \$130,059.29 default on Creditor's claim; and (2) the monthly Plan payments exceed Debtor's income. Doc. #25.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under

section 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on March 23, 2022. Claim 2.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #12. The Plan lists Creditor in Class 1 despite Creditor's claim having matured prior to the filing of the bankruptcy petition. The Plan also fails to provide for any monthly dividend on account of Creditor's claim. Claim 2; Doc. #12. Additionally, the Plan calls for monthly plan payments of \$2,282.39 for 60 months, but the debtor's schedules I and J show monthly gross income of \$1,777.36, and after calculating the scheduled expenses, monthly net income of only \$639.99. Schedules I & J, Doc. #10.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

7. [22-10257](#)-A-13 **IN RE: STACY KAISER**
[MHM-1](#)

MOTION TO DISMISS CASE
4-6-2022 [\[19\]](#)

MICHAEL MEYER/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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 an order after the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on April 21, 2022. Doc. #29. 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). Therefore, the defaults of the non-responding parties in interest are entered.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because the debtor has failed to provide a Credit Counseling Certificate (11 U.S.C. § 109(h)). Doc. #19. Specifically, Trustee asks the court to dismiss this case for:

- (1) Unreasonable delay by the debtor that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).
- (2) The debtor's failure to provide Trustee with all of the documentation required by 11 U.S.C. § 521 and the local rules.
- (3) The debtor's failure to file a prepetition credit counseling certificate required by 11 U.S.C. § 109(h).

- (4) The debtor's failure to appear at the scheduled § 341 meeting of creditors.
- (5) The debtor's failure to cooperate with Trustee and provide trust and/or will documents.

Doc. #19. A review of the debtor's Schedules A/B and D shows that the debtor's significant asset, real property, is encumbered and fully exempt. Trustee states that dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate. Doc. #19.

On April 21, 2022, the debtor responded to each of Trustee's assertions. Doc. #29. Although the debtor missed the meeting of creditors, the debtor plans to attend the continued meeting of creditors scheduled for May 3, 2022, and has been warned that failing to do so may result in dismissal. Doc. ##29, 30. The debtor states that there are no will or trust documents to be turned over to Trustee because the debtor's mother died intestate. Id. The debtor has filed a pre-petition credit counseling certificate. Doc. #28. The debtor alleges to have submitted all the additional information requested by Trustee. Doc. #29.

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). A review of Trustee's § 341 meeting report docket entry shows that the debtor appeared at the meeting of creditors held May 3, 2022. See Docket Entry 5/3/2022. Although there has been some delay, the court does not find cause for dismissal at this time.

Accordingly, this motion will be DENIED without prejudice to Trustee seeking dismissal of the debtor's case at a later time on other grounds.

8. [22-10257](#)-A-13 **IN RE: STACY KAISER**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
4-7-2022 [\[23\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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.

Stacy Lea Kaiser ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on February 23, 2022. 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) Debtor will not be able to make all payments under the plan and comply with the plan as required by 11 U.S.C. § 1325(a)(6). Doc. #23.

Rather than continue the hearing on Plan confirmation to allow the meeting of creditors to be concluded, the court is inclined to sustain the objection and deny confirmation because Debtor will be unable to comply with the Plan.

The Plan calls for monthly payments of \$650 for months 1 through 48, then \$1,540 per month for months 49 through 60. Plan, Doc. #3. Trustee calculates that the Plan will take over 80 months to fund. Doc. #23. The Plan provides for the Kern County Tax Collector in Class 1, yet the proof of claim filed by Kern County Tax Collector indicates that the claim should be provided in Class 2. Doc. #23; Claim 1. The Plan also provides that the Class 2 payments to California State Controller of \$774 per month will not begin until month 49. Doc. #3. Trustee does not believe Debtor has demonstrated feasibility, and Debtor's schedules do not provide any insight on how Debtor will be able to maintain increased payments in the future. Schedules I & J, Doc. #1.

Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6). Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #3. Here, the adjustments required to the Plan after accounting for the Kern County Tax Collector's claim and the proposed increase in monthly plan payments in month 49 make the Plan unfeasible.

Accordingly, pending any opposition at the hearing, the objection will be SUSTAINED.

9. [21-12758](#)-A-13 **IN RE: CRISTY PAREDES**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
12-23-2021 [[14](#)]

MICHAEL MEYER/MV
PETER NISSON/ATTY. FOR DBT.

NO RULING.

10. [21-12061](#)-A-13 **IN RE: EUGENE TOLOMEI**
[MHM-2](#)

MOTION TO DISMISS CASE
4-6-2022 [[48](#)]

MICHAEL MEYER/MV
MICHAEL REID/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part, case to be converted.

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 28 days' notice as required by 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). 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 amount of damages). Televideo Sys., 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) for: (1) unreasonable delay by debtor that is prejudicial to creditors; and (2) failure to confirm a Chapter 13 Plan. Doc. #48. Eugene Tolomei ("Debtor") filed a voluntary petition under chapter 13 on August 24, 2021. Doc. #1. On September 14, 2021, Debtor filed a chapter 13 plan and an amended plan on November 17, 2021. Doc. ##22, 32. On November 17, 2021, Debtor filed a motion to confirm the amended plan. Doc. #30. Debtor withdrew that motion at a hearing held on January 13, 2022. Doc. #47. No further plan or motion to confirm a plan has been filed in this case.

A review of Debtor's Schedules A/B, C and D shows that Debtor has unencumbered, non-exempt property that may be available for the benefit of unsecured creditors. See also Decl. of Kelsey A. Seib, ¶ 8, Doc. #50. Debtor did not oppose the motion.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by Debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(3) for failing to accomplish the tasks required by the proposed plan and failing to confirm a chapter 13 plan. Based on a review of Debtor's schedules and the declaration filed in support of the motion, it appears that there is non-exempt equity in Debtor's property that could be realized for the benefit of unsecured creditors.

Accordingly, the motion will be GRANTED in part, and the case will be converted to chapter 7.

11. [21-11969](#)-A-7 **IN RE: MAE MAGSBY**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
11-2-2021 [\[18\]](#)

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

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. On April 21, 2022, the debtor filed a Notice of Conversion to chapter 7 pursuant to 11 U.S.C. § 1307(a). Doc. #58.

12. [21-12678](#)-A-13 **IN RE: DONALD/MICHELE REYNOLDS**
[MHM-3](#)

MOTION TO DISMISS CASE
3-14-2022 [[35](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
DISMISSED 4/12/2022

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 on April 12, 2022. Doc. #40. The motion will be DENIED AS MOOT.

13. [21-10384](#)-A-13 **IN RE: ELLIOTT/TIFFANY SHIPES**
[RSW-3](#)

MOTION TO MODIFY PLAN
3-21-2022 [[48](#)]

ELLIOTT SHIPES/MV
ROBERT WILLIAMS/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.

14. [22-10192](#)-A-13 **IN RE: ROBERT MARKEL**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
4-8-2022 [\[19\]](#)

D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Continued to June 9, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

The chapter 13 trustee ("Trustee") filed an objection to the debtor's proposed chapter 13 plan pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4). Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than May 19, 2022. 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 the debtor's position. Trustee shall file and serve a reply, if any, by May 26, 2022.

If the 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 26, 2022. If the debtor does not timely file a modified plan or a written response, this motion may be denied on the grounds stated in Trustee's opposition.

15. [19-12898](#)-A-13 **IN RE: JEFFREY VANDERNOOR**
[RSW-4](#)

JEFFREY VANDERNOOR/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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 an order after the hearing.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). On March 22, 2022, the chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the second modified chapter 13 plan. Doc. #102. The court continued the hearing on the motion so that the debtor could respond to Trustee's objection. Doc. #106.

On April 22, 2022, the debtor filed a written reply followed shortly by amended Schedules I and J. Doc. ##108, 110. On April 28, 2022, Trustee responded on and submitted the debtor's recent paystubs. Doc. ##112, 113. The failure of other 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). Therefore, the defaults of the nonresponding parties in interest are entered. This matter will proceed as scheduled.

Jeffrey Michael Vandernoor ("Debtor") filed the second modified chapter 13 plan ("Plan") on February 15, 2022. Doc. #96. The Plan does not alter the payment term, but reduces Debtor's monthly payment from \$3,408.20 to \$2,700 and reduces the dividend to nonpriority unsecured creditors from 24% to 12%. Plan, Doc. #96; see Order Confirming First Modified Plan, Doc. #87. To support the reductions in the Plan, Debtor testified that the modification is needed because Debtor fell behind on plan payments. Debtor's Decl. ¶ 4, Doc. #97. Debtor took a different position at work that pays less, and Debtor can no longer teach summer school. Id. Debtor's amended budget provides for saving so that Debtor will be able to make payments during the one month in the summer that Debtor does not receive a paycheck in addition to retirement contributions. Id. Debtor further testifies that his new position requires more traveling to different schools, which has increased Debtor's expenses. Debtor's Suppl. Decl. ¶ 3, Doc. #108.

In the opposition filed on March 22, 2022, Trustee asked Debtor to submit paystubs from December 2021 through current and submit updated Schedules I and J to support the reduction in payments provided in the Plan and demonstrate good faith pursuant to 11 U.S.C. § 1329(b). Doc. #102. After reviewing the documents submitted by Debtor in response to Trustee's request, Trustee takes specific aim at Debtor's \$200 monthly voluntary retirement contribution. Doc. #112; see Debtor's paystubs, Doc. #113. Debtor is an above-median income debtor and, at the time of the original plan confirmation, was not allowed to contribute to voluntary retirement and had to meet the disposable income test of § 1325(b). Trustee contends that Debtor should not be allowed to make voluntary retirement contributions, in addition to mandatory retirement

contributions, through plan modification at the expense of nonpriority unsecured creditors. Doc. #112.

The court is inclined to agree with Trustee that Debtor could pay more to nonpriority unsecured creditors. Modification of a chapter 13 plan is governed by 11 U.S.C. § 1329. "Section 1329 specifies the way in which confirmed chapter 13 plans may be modified, but it does not state the circumstances in which a modification is proper." Berkley v. Burchard (In re Berkley), 613 B.R. 547, 551 (B.A.P. 9th Cir. 2020). It is left to the discretion of the bankruptcy court to determine whether plan modification is appropriate. Id. However, a debtor's proposed modified plan must still satisfy the requirements of 11 U.S.C. §§ 1322(a), 1322(b), 1323(c), and 1325(a). 11 U.S.C. § 1329(b)(1). Although the disposable income test of § 1325(b)(1)(B) does not apply to plan modification, plan modification after confirmation should not be used to increase expenses otherwise prohibited with respect to confirmation of the original chapter 13 plan to the detriment of nonpriority unsecured creditors. The court acknowledges Debtor's pay reduction but believes there is room in Debtor's budget to avoid such a significant reduction in the dividend paid to nonpriority unsecured creditors as that proposed by the Plan.

Accordingly, the motion to modify the Plan will be DENIED.

10:00 AM

1. [21-12820](#)-A-7 **IN RE: CLYDE/HEATHER DUNN**
[UST-1](#)

MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
3-30-2022 [\[25\]](#)

TRACY DAVIS/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
JORGE GAITAN/ATTY. FOR MV.

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

DISPOSITION: Continued to May 25, 2022 at 1:30 p.m.

ORDER: The court will issue an order.

The United States Trustee's motion to dismiss will be continued to May 25, 2022 at 1:30 p.m. to be heard in conjunction with the debtors' motion to convert this case to chapter 13.

1. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-32](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
4-12-2022 [[958](#)]

LEONARD WELSH/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 the 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. 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.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtors and debtors in possession Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "DIP"), requests allowance of interim compensation in the amount of \$9,025 and reimbursement for expenses in the amount of \$281.49 for services rendered from February 1, 2022 through March 31, 2022. Doc. #958. DIP reviewed the fee application and raise no objection. Doc. #961.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #33. In determining the amount of reasonable compensation to be awarded to counsel, 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).

Movant's services included, without limitation: (1) providing general case administration; (2) preparing for and responding to motions for relief from the automatic stay filed by creditors; (3) preparing and prosecuting the fee application; and (4) communicating with DIP and special counsel with respect to objections to claims. Decl. of Leonard K. Welsh, Doc. #960; Ex. B, Doc. #962. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$9,025 and reimbursement of expenses in the amount of \$281.49. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case

closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

2. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[LKW-14](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
4-13-2022 [[181](#)]

LEONARD WELSH/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 the 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. 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.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtor and debtor in possession Mark Alan Forrest ("DIP"), requests allowance of interim compensation in the amount of \$15,605 and reimbursement for expenses in the amount of \$318.38 for services rendered from December 1, 2021 through March 31, 2022. Doc. #181. DIP reviewed the fee application and raises no objection. Doc. #184.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #33. In determining the amount of reasonable compensation to be awarded to counsel, 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).

Movant's services included, without limitation: (1) providing general case administration; (2) prosecuting confirmation of DIP's first modified plan of reorganization that was ultimately withdrawn; (3) preparing and filing a second modified plan of reorganization; (4) communicating with DIP regarding financing, operating reports and projections; and (5) preparing and the prosecuting fee application. Decl. of Leonard K. Welsh, Doc. #183; Ex. B, Doc. #185. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$15,605 and reimbursement of expenses in the amount of \$318.38. Movant is

allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

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

AMENDED MOTION FOR COMPENSATION BY THE LAW OFFICE OF CADDEN & FULLER LLP
FOR IGNACIO J. LAZO, DEBTORS ATTORNEY(S)
3-23-2022 [[73](#)]

IGNACIO LAZO/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 matter is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR") and failing to conform with the United States Trustee Program's guidelines for compensation and reimbursement applications.

The declaration of Ignacio J. Lazo and the exhibits referred to in the declaration are filed as a single document. See Doc. #75. Declarations must be filed as separate documents. LBR 9014-1(d)(4). Exhibits must be filed as a separate document from the document to which it relates and must include an exhibit index. LBR 9004-2(d).

More importantly, the application and supporting time entries do not comply with the United States Trustee Program's Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. § 330 ("1996 Guidelines"), 28 C.F.R. Part 58, App'x A, and do not contain sufficient detail for this court to determine whether the fees requested comply with the standards of 11 U.S.C. § 330. A copy of the 1996 Guidelines may be found at: https://www.justice.gov/sites/default/files/ust/legacy/2013/06/28/1996_Fee_Guidelines.pdf. Pages 24890 and 24891 of the 1996 Guidelines set forth fee application organization guidelines as well as requirements on blocked or lumped billing, overhead expenses, and examples of project categories. Particular to this motion, the time entries do not comply with requirements of (b)(4)(v) of the 1996 Guidelines. The court encourages counsel to review the 1996 Guidelines, as well as the Local Rules of Practice, to ensure compliance in future matters.

4. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
[ILJ-3](#)

AMENDED MOTION FOR AUTHORIZATION TO ACCEPT A THIRD PARTY POSTPETITION
RETAINER
3-23-2022 [67]

JUAREZ BROTHERS INVESTMENTS, LLC/MV
IGNACIO LAZO/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 matter is DENIED WITHOUT PREJUDICE for improper notice, failure to comply with the local rules, and failure to apply relevant Ninth Circuit authority.

Notice by mail of this motion was sent March 23, 2022, with a hearing date set for May 5, 2022. The motion was set for hearing on at least 28 days' notice and is governed by Local Rule of Practice ("LBR") 9014-1(f)(1). Pursuant to LBR 9014-1(f)(1), written opposition must be filed no later than 14 days prior to the date set for hearing. However, the Notice of Hearing filed with the motion stated that opposition must be filed and served on or before March 24, 2022 and that failure to file written response by March 24, 2022 may result in the court granting the motion prior to the hearing. The Notice of Hearing does not comply with LBR 9014-1(f)(1).

Additionally, the declarations of Ignacio J. Lazo and Walter Juarez, as well as the exhibits referred to in those declarations, are filed as a single document. See Doc. #70. Each declaration must be filed as a separate document. LBR 9004-2(c)(1). Exhibits also must be filed as a separate document from the document to which it relates and must include an exhibit index. LBR 9004-2(d). Further, the purported execution by Walter Juarez of his declaration does not comply with LBR 9004-1(c)(1)(B). Doc. #70.

Finally, when counsel for a chapter 11 debtor is to be funded by a third party, the Ninth Circuit has adopted a factor-based test to determine whether an impermissible conflict of interest exists. See In re Lotus Props, LP, 200 B.R. 388, 392-95 (Bankr. C.D. Cal. 1996) (analyzing In re Kelton, 109 B.R. 641 (Bankr. D. Vt. 1989)). The motion makes no mention of nor applies the relevant Ninth Circuit test.

11:00 AM

1. [19-13783](#)-A-7 **IN RE: MARK/SUSAN CHAGOYA**
[19-1129](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-6-2020 [\[40\]](#)

BROWN V. CHAGOYA ET AL
JEFF BEAN/ATTY. FOR PL.

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

DISPOSITION: Continued to July 7, 2022, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status report filed on April 28, 2022 (Doc. #98) and related declaration (Doc. #99), the status conference will be continued to July 7, 2022, at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than June 30, 2022.