



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, June 1, 2023
Department A – Courtroom #11
Fresno, California**

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

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [23-10102](#)-A-13 **IN RE: KERRIE GRAY**
[FW-3](#)

MOTION TO CONFIRM PLAN
4-7-2023 [\[61\]](#)

KERRIE GRAY/MV
GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

2. [23-10703](#)-A-13 **IN RE: CESAR BANDA AND SILVIA PENA**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-1-2023 [\[51\]](#)

MICHAEL MEYER/MV
ZISHAN LOKHANDWALA/ATTY. FOR DBT.
MICHAEL MEYER/ATTY. FOR MV.

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This bankruptcy case was dismissed on May 25, 2023. Doc. #71.

MOTION FOR COMPENSATION FOR STEPHEN LABIAK, DEBTORS ATTORNEY(S)
5-1-2023 [\[73\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

As an informative matter, the movant did not attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case with the court's mandatory Certificate of Service form filed in connection with the motion (Doc. #78). Instead of using the Clerk of the Court's matrix that can be generated from the court's website, the movant attached a PACER generated list of names and addresses served. In the future, the movant should attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case that can be generated from this court's website.

Stephen L. Labiak ("Movant"), counsel for Ty Sales ("Debtor"), the debtor in this chapter 13 case, requests allowance of final compensation in the amount of \$4,330.27 and reimbursement for expenses in the amount of \$237.63 for services rendered from March 16, 2020 through December 31, 2023, including estimated costs to close out this bankruptcy case. Doc. #73. Debtor's confirmed plan provides, in addition to \$300.00 paid prior to filing the case, for \$11,700.00 in attorney's fees. Am. Plan, Doc. ##34, 48. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of \$7,060.00 and reimbursement for expenses totaling \$72.10. Order, Doc. #28. Debtor consents to the amount requested in Movant's application. Decl. of Ty Sales, Doc. #75; Doc. #73.

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) claim administration and objections; (2) first amended or modified plan, hearings, and objections; and (3) preparation for discharge and case closing. Doc. #73. 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 bases, in addition to compensation requested by this motion in the amount of \$4,330.27 and reimbursement for expenses in the amount of \$237.63 to be paid in a manner consistent with the terms of the confirmed plan.

4. [23-10211](#)-A-13 **IN RE: DAVID/KATIE ALVAREZ**
[NES-1](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY(S)
4-25-2023 [38]

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Neil E. Schwartz ("Movant"), counsel for David Alvarez and Katie Alvarez (collectively, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation in the amount of \$7,334.50 and reimbursement for expenses in the amount of \$429.00 for services rendered from May 12, 2022 through April 25, 2023. Doc. #38. Debtors' confirmed plan provides, in addition to \$313.00 paid prior to filing the case, for \$15,000.00 in attorney's fees to be paid through the plan. Plan, Doc. ##3, 35. No prior fee application has been filed. Debtors consent to the amount requested in Movant's application. Doc. #38.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's

attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtors' plan; (2) attending 341 meeting of creditors; (3) reviewing and resolving objection to plan; (4) preparing the fee application; and (5) general case administration. Exs. A & B, Doc. #40. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$7,334.50 and reimbursement for expenses in the amount of \$429.00 to be paid in a manner consistent with the terms of the confirmed plan.

5. [22-11635](#)-A-13 **IN RE: EMELITA BROWN**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
12-23-2022 [[29](#)]

MICHAEL MEYER/MV
JOSHUA STERNBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 8, 2023 at 9:00 a.m.

ORDER: The court will issue an order.

At a hearing held on April 6, 2023, the hearing on this motion was continued to June 1, 2023 to track with an expected hearing on a motion to confirm a modified chapter 13 plan. Doc. #95. On April 26, 2023, the debtor filed a motion to confirm a modified plan and set a hearing for June 8, 2023 at 9:00 a.m. Doc. ##106-111; 113-114. Accordingly, the hearing on this motion to dismiss is continued to June 8, 2023 at 9:00 a.m. to be heard in connection with the debtor's motion to confirm a modified plan.

6. [22-12135](#)-A-13 **IN RE: KIMBERLY YONEMITSU-TODD**
[NES-3](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY(S)
4-27-2023 [[70](#)]

NEIL SCHWARTZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 15, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

Due to a family emergency, the hearing on this contested motion is continued to June 15, 2023 at 9:30 a.m.

7. [22-11562](#)-A-13 **IN RE: FRANCISCO LOPEZ JUAREZ AND VICKIE JUAREZ**
[SL-1](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
4-26-2023 [\[52\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Scott Lyons, Attorney at Law ("Movant"), counsel for Francisco Lopez Juarez and Vickie Ann Juarez (collectively, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation in the amount of \$10,166.50 and reimbursement for expenses in the amount of \$742.95 for services rendered from May 16, 2022 through April 25, 2023. Doc. #52. Debtors' proposed plan provides, in addition to \$1,613.00 paid prior to filing the case, for \$12,000.00 in attorney's fees to be paid through the plan. Plan, Doc. #60. No prior fee application has been filed. Debtors consent to the amount requested in Movant's application. Doc. #52.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtors' plan; (2) preparing for and attending 341 meeting; (3) preparing response to objection to claim of exemptions; (4) preparing the fee application; and (5) general case administration. Ex. A & B, Doc. #54. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$10,166.50 and reimbursement for expenses in the amount of \$742.95 to be paid in a manner consistent with the terms of the confirmed plan.

1. [19-11901](#)-A-7 **IN RE: ARMANDO CRUZ**
[19-1095](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
8-12-2019 [[1](#)]

STRATEGIC FUNDING SOURCE, INC. V. CRUZ
JARRETT OSBORNE-REVIS/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 15, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to matter #2, below, the court is vacating the order to show cause as to why defendant's answer (Doc. #185) should not be stricken and excusing the failure of counsel for the defendant to file a timely pre-trial statement and appear at the pre-trial conference held on March 16, 2023. Accordingly, the defendant shall file and serve a pre-trial statement on or before June 8, 2023, and this pre-trial conference is continued to June 15, 2023 at 11:00 a.m.

2. [19-11901](#)-A-7 **IN RE: ARMANDO CRUZ**
[19-1095](#)

ORDER TO SHOW CAUSE REGARDING STRIKING OF ANSWER AND ENTRY
OF DEFAULT OF DEFENDANT ARMANDO CERVANTES CRUZ
3-17-2023 [[210](#)]

STRATEGIC FUNDING SOURCE, INC. V. CRUZ
RESPONSIVE PLEADING

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

On March 17, 2023, this court issued an order to show cause ("OSC") why the defendant's answer (Doc. #185) should not be stricken and the defendant's default entered for the failure of counsel for the defendant to (a) file a pre-trial statement by February 24, 2023 as required by the Modified Order and (b) appear at the March 16, 2023 pre-trial conference. Doc. #210.

On May 15, 2023, counsel for the defendant filed response and declaration explaining that counsel for the defendant failed to enter the dates to file the pre-trial statement and the date for the pre-trial conference in his calendar around the time that the parties requested by stipulation that the court modify the pre-trial scheduling order. Decl. of Scott Lyons, Doc. #216. As a result, counsel for the defendant failed to file a pre-trial statement by February 24, 2023 as required by the modified scheduling order and did not appear at the March 16, 2023 pre-trial conference. Lyons Decl., Doc. #216.

On May 30, 2023, the plaintiff filed a reply to the defendant's response to the OSC. Doc. #218. In the reply, the plaintiff asked if this court vacates the OSC that the court: (1) award the plaintiff \$1,395.00 in attorneys' fees comprised of \$585.00 for preparing for and attending the pre-trial conference plus \$810.00 for preparing the plaintiff's reply to the OSC; and (2) reschedule the pre-trial conference and require the defendant to file a pre-trial statement. Doc. ##218, 219.

Based on the explanation provided by counsel for the defendant and after consideration of the plaintiff's reply to the OSC, the court finds that the failure of the defendant's counsel to appear at the March 16, 2023 pre-trial conference to be inadvertent, and the court will not strike the defendant's answer and will not enter the defendant's default as set forth in the OSC. The OSC is vacated. The court will not award any of the attorneys' fees requested by the plaintiff. The court will continue the pre-trial conference to June 15, 2023 at 11:00 a.m. and require the defendant to file and serve a pre-trial statement on or before June 8, 2023.

3. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[19-1081](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-28-2019 [[1](#)]

DILDAY ET AL V. JONES
RILEY WALTER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

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

ORDER: The court will issue an order.

Having considered the status report filed by the defendant on May 24, 2023 (Doc. #118) and the status report filed by the plaintiff on May 25, 2023 (Doc. #120), the status conference is continued to July 20, 2023 at 11:00 a.m. The parties shall file a joint status report on or before July 13, 2023.

4. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
7-8-2021 [[203](#)]

NICOLE V. T2M INVESTMENTS, LLC
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 29, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

Due to a family emergency, the pre-trial conference is continued to June 29, 2023 at 11:00 a.m. The dates reserved for the trial of this adversary proceeding, August 21-25, 2023, are not affected by the continuance of the pre-trial conference. Unless there is a settlement, the court will try this adversary proceeding on the trial dates to which the parties previously consented on the record and have been reserved by the court.

5. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[23-1021](#) [CBC-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
AND/OR MOTION FOR ABSTENTION
5-5-2023 [\[12\]](#)

NICOLE V. RAMIREZ ET AL
CORY CHARTRAND/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 29, 2023 at 11:00 a.m.

NO ORDER REQUIRED.

On May 24, 2023, the court issued an order continuing the hearing on the motion to dismiss to June 29, 2023 at 11:00 a.m. Doc. #48.

6. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[23-1021](#) [CBC-2](#)

MOTION TO STRIKE
5-5-2023 [\[18\]](#)

NICOLE V. RAMIREZ ET AL
CORY CHARTRAND/ATTY. FOR MV.

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

DISPOSITION: Continued to June 29, 2023 at 11:00 a.m.

NO ORDER REQUIRED.

On May 24, 2023, the court issued an order continuing the hearing on the motion to strike to June 29, 2023 at 11:00 a.m. Doc. #50.