



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Department B – Courtroom #13  
Fresno, California**

**Hearing Date: Thursday, June 20, 2024**

Unless otherwise ordered, all matters before the Honorable René Lastreto II, shall be simultaneously: (1) **In Person** at, Courtroom #13 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties or their attorneys who wish to appear at a hearing remotely must sign up by **4:00 p.m. one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party/attorney who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties and their attorneys who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest and/or their attorneys may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#). If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

**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.

**Post-Publication Changes:** The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:30 AM

1. [24-10402](#)-B-13     **IN RE: ERON LYKINS**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE  
LILIAN G. TSANG  
4-8-2024     [[13](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

2. [24-11004](#)-B-13     **IN RE: ROBERT/CLAUDIA MASON**  
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG  
6-4-2024     [[27](#)]

LILIAN TSANG/MV  
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION:     Continued to July 10, 2024, at 9:30 a.m.

ORDER:     The court will issue an order.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Robert and Claudia Mason (collectively "Debtors") on April 22, 2024, on the following basis:

1. The plan is not feasible under 11 U.S.C. §1325(a)(6). The plan provides for GoodLeap LLC and Service Finance Company to be treated as a Class 2 creditors and paid the value of the collateral securing the claim, but no order on valuation has been entered yet.

Doc. #27. On June 7, 2024, Debtors filed a Response to the Objection noting that Motions for Valuation as to those two creditors have been filed and are set for hearing on July 10, 2024. At 9:30 a.m. Doc. #31; see Doc. ##17, 22. Accordingly, this objection will be CONTINUED to **July 10, 2024, at 9:30 a.m.** to be heard in conjunction with the hearings on the two valuation motions.

3. [24-10647](#)-B-13     **IN RE: JORGE/JOSEFINA ALVARADO**  
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY FIRSTKEY  
MASTER FUNDING 2021-A COLLATERAL TRUST  
4-2-2024    [\[13\]](#)

FIRSTKEY MASTER FUNDING 2021-A  
COLLATERAL TRUST/MV  
STEPHEN LABIAK/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

DISPOSITION:        Overruled as moot.

ORDER:                The court will enter the order.

On May 27, 2024, the Debtors in the above-styled case filed an Amended Chapter 13 Plan. Doc. #26. Accordingly, this Objection is OVERRULED as moot.

4. [24-10648](#)-B-13     **IN RE: NANCY ALVA**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE  
LILIAN G. TSANG  
4-30-2024    [\[25\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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 Moving Party shall submit a proposed order after hearing.

The Chapter 13 Trustee ("Trustee") objects to confirmation of the Chapter 13 Plan filed by Nancy Marie Alva ("Debtor") on March 15, 2024, on the following grounds:

1. The Debtor's Schedule J shows gross income of \$6,566.00, of which \$3,300.00 consists of contributions from family members (Debtor's father and son) Both of whom have not submitted Declarations regarding their ability and willingness to contribute these funds for the duration of the Plan. The Debtor's son has submitted a declaration stating that he would pay \$3,000.00 per month in support for Debtor, but her father had not filed a Declaration as of the filing of the motion. (See Doc. #22).

2. According to the Treasury Department's Proof of Claim (POC #4-1), Debtor has not filed her 2021 tax returns. Doc. #25.

The court notes that the son's declaration does state he lives in the household and that he will pay \$3,000.00 per month toward the Plan payment. The declaration alludes to the source of these funds but also that he is temporarily receiving disability payments. Evidence showing any historical effort of the son to provide funding and the son's financial ability to continue to pay 75% of his monthly income is also needed.

On May 13, 2024, Debtor's father submitted a Declaration that he would be contributing \$300.00 towards Debtor's support. However, Debtor did not initially respond to the objection arising from failure to file the 2021 tax returns.

On May 15, 2024, the court continued this matter to June 20, 2024, at 9:30 a.m. Doc. #29. On May 27, 2024, Debtor filed a *Response* stating:

1. The lack of a declaration regarding the \$300.00 deficiency was cured with the filing of Doc. #28.
2. Debtor has filed all required tax returns.
3. Debtor has sent a copy of the supposedly delinquent 2021 tax return to the IRS to confirm that it had been filed, and in response, the IRS amended its claim (POC #4-2).

Doc. #32. The *Response* also provides additional clarification as to the son's expected contribution the plan payment. *Id.*

On June 13, 2024, the Trustee filed a *Reply*, acknowledging the father's declaration at Doc. #28 which apparently resolves that part of Trustee's Objection. Doc. #37. The reply further acknowledged that Debtor has filed all tax returns and the IRS has filed an amended proof of claim, thereby resolving that part of the Objection. *Id.*

However, while Trustee concedes that Debtor's son has filed a declaration indicating his intent to contribute \$3,000.00 to assist Debtor with household expenses (see Doc. #22), that declaration is belied by the fact that the son (Christopher Gary Isais) ("Isais") has filed for Chapter 13 bankruptcy himself in case number 24-10088, and, per his schedules filed in that case, Isais cannot afford to contribute \$3,000..00 per month towards the feasibility of Debtor's plan. Doc. #37.

Unless the Trustee withdraws this Objection, this matter will proceed as scheduled so that Debtor may respond to the Trustee's Reply. At present, the court is inclined to SUSTAIN the Objection. But if the Debtor can adequately resolve the remaining objection arising from the supposed financial support from Isais, then this Objection will be overruled. Alternatively, the court may sustain the Objection or continue this matter to a later date to afford Debtor time to respond to the Trustee's concerns.

5. [24-10373](#)-B-13     **IN RE: MARIA RAMIREZ**  
[DMG-1](#)

MOTION TO CONFIRM PLAN  
5-21-2024    [\[28\]](#)

MARIA RAMIREZ/MV  
D. GARDNER/ATTY. FOR DBT.  
RESPONSIVE PLEADING  
CONT'D TO 7/10/24 WITHOUT AN ORDER

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

DISPOSITION:     Continued to July 17, 2024, at 9:30 a.m.

ORDER:             The court will issue an order.

Maria Ramirez ("Debtor") moves for an order confirming the *First Modified Chapter 13 Plan* dated May 21, 2024. Doc. #31. Debtor has not yet confirmed a plan. *Docket generally*. Chapter 13 trustee Lilian G. Tsang ("Trustee") timely objected to confirmation of the plan for the following reason(s):

1. The modified plan includes a claim by Hillcrest for a burial plot in Class 4. Schedule D should be amended to include this Creditor.
2. Schedule J filed on February 21, 2024, lists a monthly net income of \$1,887.80 and does not include the monthly contract installment for the Hillcrest burial plot. The new plan calls for monthly payments of \$2,153.00. Unless a new Schedule I&J is filed, Debtor will not be able to complete the plan payments in 60 months.
3. Debtor failed to comply with LBR 3015-1(d)(1), which requires a total of thirty-five (35) days' notice before a confirmation hearing.

Doc. #39.

Cognizant of the fact that that insufficient notice was given, Debtor filed an Amended Notice of Hearing on May 23, 2024, which purported to reset the hearing date to July 10, 2024, and which was served on all parties. Doc. ##41, 42. Technically, this constitutes an unauthorized continuance without a court order, which is forbidden under LBR 9014-1(j). However, the court's normal procedure for confirmation motions that are opposed calls for continuing the matter for a month anyway. Because the Trustee timely responded to the motion to raise other grounds for objection, the court elects to view the Trustee as having waived the procedural objection based on the 35-days' notice requirement of LBR 3015-1(d)(1), as hearing the motion on the continued date will provide sufficient notice under LBR 3015(d)(1).

Accordingly, his motion to confirm plan will be CONTINUED to **July 17, 2024, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or all objections to confirmation are

withdrawn, the Debtor shall file and serve a written response to the objections no later than fourteen (14) days before the continued hearing date. The response shall specifically address each issue raised in the objection(s) to confirmation, state whether each issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Any replies shall be filed and served no later than seven (7) days prior to the hearing date.

If the Debtor elects to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than seven (7) days before the continued hearing date. If the Debtor does not timely file a modified plan or a written response, the objection will be sustained on the grounds stated, and the motion will be denied without further hearing.

6. [19-12075](#)-B-13     **IN RE: MARIA DEL ROCIO SAAVEDRA**  
[SLL-6](#)

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS  
ATTORNEY(S)  
5-16-2024    [\[77\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.

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

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

DISPOSITION:     Granted.

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

Stephen L. Labiak ("Applicant"), attorney for Maria del Rocio Saavedra ("Debtor"), requests final compensation in the sum of **\$3,672.00** under 11 U.S.C. § 330. Doc. #77. This amount consists of **\$3,445.00** in fees and **\$227.00** in expenses from September 21, 2019, to December 31, 2024. *Id.*

Debtor executed both a Declaration dated May 13, 2024, and a statement of consent dated May 16, 2024, indicating that Debtor has read the fee application and approves the same. Doc. #80; Doc. #77(§ 9(7)).

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to

the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys. Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Section 3.05 of the *Chapter 13 Plan* dated May 16, 2019, confirmed September 16, 2019, indicates that Applicant was paid \$0.00 prior to filing the case and, subject to court approval, additional fees of \$10,000.00 shall be paid through the plan upon court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Docs. #4,34.

This is Applicant's second and final fee application. Doc. #67. Applicant was previously awarded \$6,171.20 in compensation on January 16, 2020, for services and expenses from April 8, 2019, through September 20, 2019. *Id.*

Applicant's firm provided 18.2 billable hours at the following rates, totaling **\$3,445.00** in fees:

Professional	Rate	Billed	Total
Stephen L. Labiak	\$250.00	15.9	\$3,325.00
Linda Fellner	\$100.00	2.3	\$120.00
<b>Total Hours &amp; Fees</b>		<b>18.2</b>	<b>\$3,445.00</b>

Doc. #77 et seq. Applicant also incurred **\$117.93** in expenses:

Postage	\$59.80
Computer Legal Research	\$0.90
Reproduction	\$166.30
<b>Total Expenses</b>	<b>\$227.00</b>

*Ex. D, id.* These combined fees and expenses total **\$3,672.00**.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services here included, without limitation: claim administration and objections; fee applications; discharge and case



closing; and case administration. Docs. ##77, 82. The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees. Doc. #77.

Accordingly, this motion will be GRANTED. Applicant shall be awarded **\$3,445.00** in fees as reasonable compensation for services rendered and **\$227.00** in reimbursement of actual, necessary expenses on a final basis under 11 U.S.C. § 330. The chapter 13 trustee will be authorized to pay Applicant **\$3,672.00** through the confirmed plan for services and expenses from expenses from September 21, 2019, to December 31, 2024.

It appears that the Applicant has not requested that the prior interim compensation award be approved on a final basis, and no such relief will be granted at this time.

7. [23-11981](#)-B-13     **IN RE: SHIMEKA CONWAY**  
[TCS-3](#)

MOTION TO INCUR DEBT  
6-6-2024    [\[81\]](#)

SHIMEKA CONWAY/MV  
TIMOTHY SPRINGER/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 will submit a proposed order after hearing.

Shimeka Conway ("Debtor") moves for an order authorizing her to incur new debt in an amount not to exceed \$25,000.00 to be paid over 54 months at an interest rate of 23.99% to buyout the lease on her 2020 Mercedes-Benz GLC ("the Vehicle"). Doc. #81. According to Section 4.02 the confirmed plan, Debtor currently pays \$578.81 per month to Mercedes-Benz Financial Services ("MBFS"). Doc. #62.

The motion erroneously states that "the lease was in Class 6," which is for "designated nonpriority unsecured claims," but there are no Nonstandard Provisions which address this claim as is required under Section 3.13 of the Plan. *Id.* That said, unexpired leases under the plan were to be paid directly by the Debtor, and this new loan, if approved, will also be paid outside the plan, so granting this motion will not otherwise affect plan distributions. *Compare* Doc. #81 and #62.

Debtor declares that this motion is necessary because the lease is not being renewed and the only way to retain the Vehicle is to finance a buyout of the lease. Doc. #83. Debtor declares that she has been approved for a loan of up to \$21,400.00 for 54 months at 23.99% interest with \$3,000.00 down (which she has saved). *Id.*

Debtor further declares that the new monthly payment will be \$675.15 per month, which is less than the \$727.00 per month she is currently paying on the lease. *Id.*

As noted, the confirmed plan states that the monthly lease payment has been \$578.61. Doc. #62. However, in both the moving papers and in Debtor's *Schedule I&J* dated December 7, 2023, the monthly lease payment is listed as \$727.00. Doc. #81 *et seq.*; Doc. #56. The most recent *Schedule I&J* dated June 6, 2024, lists a monthly payment of \$675.00. Doc. #79. Debtor will have an opportunity to explain this apparent discrepancy at the hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and GRANT the motion. If opposition is presented at the hearing, the court will 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.

LBR 3015-1(h)(A) allows the debtor, with court approval, to finance the purchase of a motor vehicle if written consent of the chapter 13 trustee is filed with or as part of the motion. The trustee's approval is a certification to the court that: (i) all chapter 13 plan payments are current; (ii) the chapter 13 plan is not in default; (iii) the debtor has demonstrated an ability to pay all future plan payments, projected living expenses, and the new debt; (iv) the new debt is a single loan incurred to purchase a vehicle that is reasonably necessary for the maintenance or support of the debtor, or necessary for the continuation, preservation, and operation of the debtor's business; (v) the only security for the new debt will be the vehicle purchased by debtor; and (vi) the new debt does not exceed \$20,000.00.

If the trustee will not give consent, the debtors may still seek court approval under LBR 3015-1(h)(E) by filing and serving a motion on the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1. Here, the motion is not accompanied by a certificate of Trustee approval.

After review of the attached evidence (and subject to Debtor properly addressing the inconsistencies noted above), the court finds that Debtor will be able to make the monthly payment for the Vehicle, as the monthly car note payment is less than Debtor is currently paying under the lease. Debtor is authorized, but not required, to incur further debt in order to buy out her lease with MBFS and purchase the vehicle outright. Should the Debtor's budget prevent maintenance of current plan payment, Debtor shall continue making plan payments until the plan is modified.

8. [24-10581](#)-B-13     **IN RE: JULIO CABALLEROS ROMAN**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE  
LILIAN G. TSANG  
4-19-2024    [\[16\]](#)

KEVIN TANG/ATTY. FOR DBT.

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

DISPOSITION:     Sustained.

ORDER:             The court will issue the order.

Chapter 13 Trustee, Lilian G. Tsang ("Trustee"), objects to confirmation of the Chapter 13 Plan filed by Julio Caballeros Roman ("Debtor") on March 11, 2024, on the following grounds:

1. Debtor's Schedule I & J appear to understate Debtor's income based on the average gross monthly income as demonstrated by Debtor's paystubs.

Doc. #16.

The court continued this objection to June 20, 2024, at 9:30 a.m. Docs. ##19-20. Debtor was directed to file and serve a written response to the objection not later than fourteen (14) days before the continued hearing date, or file a confirmable, modified plan in lieu of a response not later than seven (7) days before the continued hearing date, or the objection would be sustained on the grounds stated in the objection without further hearing. Id.

Debtor neither filed a written response nor a modified plan. However, Debtor did file an amended Form 122C-1 which seems to show a *third* monthly income which differs from the two monthly income figures contained in Schedule I & J and alluded to by the pay stubs. This filing is not a response or a modified Plan. Therefore, Trustee's objection will be SUSTAINED on the grounds stated in the objection.

9. [23-12585](#)-B-13     **IN RE: RONALD BARHAM**  
[JDD-2](#)

CONTINUED MOTION TO CONFIRM PLAN  
4-23-2024    [\[46\]](#)

RONALD BARHAM/MV  
JONATHAN DOAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING  
OPPOSITION BY CREDITOR WITHDRAWAN

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

DISPOSITION:        Denied as moot.

ORDER:                The court will enter the order.

On May 31, 2024, Debtor filed a *Fourth Amended Chapter 13 Plan*. Doc. #61. Accordingly, this motion is DENIED AS MOOT.

10. [24-11594](#)-B-13     **IN RE: MATTHEW QUALLS**  
[SDS-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
6-11-2024    [\[13\]](#)

MATTHEW QUALLS/MV  
SUSAN SILVEIRA/ATTY. FOR DBT.  
OST 6/12/24

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:        Granted.

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

Matthew Qualls ("Debtor") requests an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #13.

This matter will be called and proceed as scheduled. Written opposition was not required, and opposition may be presented at the hearing. In the absence of opposition at the hearing, this motion may be GRANTED if Movant has complied with the order shortening time ("OST").

This motion was set for hearing on shortened notice with an OST under the procedure specified in Local Rule of Practice ("LBR") 9014-1(f)(3). Consequently, the creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no

opposition is offered at the hearing, the court will take up the merits of the motion. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court begins by noting a procedural error on the part of Debtor's counsel, as the Notice accompanying the Motion erroneously states that hearing in this matter is scheduled for June 20, 2024, at **2:00 p.m.** That is incorrect. As the Order makes clear, the hearing is actually scheduled for **9:30 a.m.** As BAPCPA strictly limits the court's ability to extend the stay if a motion cannot be heard within 30 days and the proper time is stated on the court's Order Shortening Time, the court will reluctantly overlook this procedural error as Debtor timely filed a Certificate of Service on June 12, 2024, averring that the OST and the Notice of Hearing, both of which had the correct date and time, were served on all parties in interest is shown. Doc. #21.

Under 11 U.S.C. § 362(c) (3) (A), if the debtor has had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay under subsection (a) shall terminate with respect to the debtor on the 30th day after the latter case is filed. Debtor had one case pending within the preceding one-year period that was dismissed: Case No. 23-122780. That case was filed on October 12, 2023. and was dismissed on February 20, 2024. This case was filed on June 9, 2024. Doc. #1. The automatic stay will expire on July 9, 2024.

11 U.S.C. § 362(c) (3) (B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed. Such request must be made within 30 days of the petition date.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c) (3) (C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition.'" *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by *Taggart v. Lorenzen*, 139 S. Ct. 1785 (2019)).

In this case, the presumption of bad faith arises because Debtor had a previous case under chapter 13 that was pending within the preceding one-year period and Debtor failed to perform the terms of a confirmed plan. 11 U.S.C. § 362(c) (3) (C) (i) (II).

Debtor declares that the previous case was voluntarily dismissed by Debtor after Debtor learned that he would have an unexpected and substantial 2023 tax liability that could not be incorporated into the confirmed plan and maintain feasibility. Docs. ##13, 15. Debtor voluntarily dismissed the prior case with the intention of filing a new case so that he could propose a new plan that would address all outstanding debt, including the 2023 tax liability. *Id.* Debtor declares that this case has been filed in good faith, that the plan in the current case will be confirmed, and that he will be able to perform under the terms of the plan once it is confirmed. *Id.* Debtor further declares that the prior case was not dismissed due to failure to file or amend the petition or any required documents to provide adequate protection ordered by the court, nor was it dismissed while a motion for relief was pending before the court. *Id.*

In the prior case, it appears that no plan was confirmed before the case was dismissed. *See Case No. 23-12278, docket generally.* While not explicitly stated as such, it appears that Debtor is arguing that the tax liability which arose prepetition, but which was not assessed until post-petition represents a "significant change in circumstances" relative to the filing of the prior petition. Docs. ##13, 15.

In the prior case, Debtor's monthly payment was to be \$3,234.00 for month 1 and \$3,011.00 for months 2-60, and Debtor proposed a .038% distribution to unsecured creditors, a nominal sum. *Case No. 23-12278, Doc. #37.* Debtor's most recent Schedule I & J from the prior plan indicated that his monthly net income was \$3,011.46. While the moving papers are silent as to the cause of this change in monthly net income, it appears that be the result of significant increases in Debtor's food and housekeeping supply needs, his medical and dental expenses, and student loan payments which were not listed in Debtor's prior case and which more than offset the increase of more than \$2,000.00 a month in Debtor's gross income. *Compare Doc. #1 (Sched. I & J) with Case No. 23-12278, Doc. #40 (Amended Sched. I & J).* In essence, while Debtor's income has risen significantly, his expenses have risen even more so, leaving him less able to fund a plan capable of any meaningful distribution to unsecured creditors. *Id.*

Based on the moving papers and the record, the presumption appears to have been rebutted by clear and convincing evidence because Debtor's financial condition and circumstances have materially changed. Debtor's petition appears to have been filed in good faith and the proposed plan does appear to be feasible.

This matter will be called and proceed as scheduled. In the absence of opposition at the hearing, this motion may be GRANTED. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2).

11:00 AM

1. [21-11001](#)-B-11     **IN RE: NAVDIP BADHESHA**  
[RMB-16](#)

RESCHEDULED STATUS CONFERENCE RE: OBJECTION TO CLAIM OF  
CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, CLAIM  
NUMBER 8  
4-11-2022     [\[241\]](#)

NAVDIP BADHESHA/MV  
MATTHEW RESNIK/ATTY. FOR DBT.

NO RULING.

2. [19-15103](#)-B-7     **IN RE: NATHAN/AMY PERRY**  
[20-1017](#)     [CAE-2](#)

ORDER TO SHOW CAUSE WHY COURT SHOULD NOT STRIKE ANSWER AND  
ENTER DEFAULT FOR FAILURE TO ABIDE BY COURT ORDERS  
5-20-2024     [\[116\]](#)

RICHNER ET AL V. PERRY

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

DISPOSITION:     The Defendant's Answer will be stricken, and her  
default entered.

ORDER:     The court will issue an order.

On May 20, 2024, this court issued an *Order to Show Cause* why the court should not strike the Answer of Defendant Amy Perry ("Defendant" or "Perry") and enter default against her for failure to abide by court orders. Doc. #116. Specifically, Perry failed to timely file and serve a pretrial conference statement, and she did not appear at the May 15, 2024, rescheduled pretrial conference. *Id.* In its Order to Show Cause, the court noted that her failure to file the pretrial statement and failure to appear violated Civil Rule 7016 (Fed. R. Bankr. P. 16) and was also a failure to obey a scheduling order. *Id.*

The order further stated:

IT IS FURTHER ORDERED that a written response accompanied by admissible evidence responding to this order to show cause shall be served and filed by Defendant Amy Perry on or before **June 6, 2024**. Failure to file and serve a response, will result in the court vacating the hearing and entering orders striking Defendant Amy Perry's answer and entering Defendant Amy Perry's default without a hearing.

*Id.* (emphasis added).

Perry failed to timely serve and/or file a written response as directed by the court. Accordingly, consistent with the Order to Show Cause, it is hereby ORDERED that the Defendant's Answer to the Complaint shall be stricken, and that Defendant's Default shall be entered. The hearing set for June 20, 2024, shall be vacated and DROPPED from the calendar.

3. [24-10003](#)-B-7     **IN RE: MARIA LUNA MANZO**  
[24-1004](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
3-29-2024     [[1](#)]

LABOR COMMISSIONER, STATE OF  
CALIFORNIA V. LUNA MANZO  
MATTHEW SIROLLY/ATTY. FOR PL.

NO RULING.

4. [23-11723](#)-B-7     **IN RE: FELIPE REYNOSO**  
[24-1006](#)     [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT  
4-19-2024     [[6](#)]

FEAR V. REYNOSO  
GABRIEL WADDELL/ATTY. FOR PL.

NO RULING.

5. [23-11332](#)-B-11     **IN RE: TWILIGHT HAVEN, A CALIFORNIA**  
NON-PROFIT CORPORATION  
[23-1037](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL  
9-18-2023     [[1](#)]

CASTELLANOS V. TWILIGHT HAVEN  
MEGHAN HIGDAY/ATTY. FOR PL.

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

DISPOSITION:                     Continued to July 17, 2024, at 11:00 a.m.

ORDER:                             The court will enter the order.

On June 10, 2024, this court entered an order in the underlying bankruptcy case approving the *Motion to Compromise Controversy/Approve Settlement Agreement* which purported to resolve this adversary proceeding. See *Main Case Doc. #652*. On June 13, 2024, the Debtor submitted a status report in the adversary advising that, per the settlement agreement, Plaintiff is to dismiss this



proceeding on or before June 21, 2024. Doc. #51. The Status Report also stated incorrectly that this status conference is set for June 23, 2024, when it is actually scheduled for June 20, 2024, the day before the deadline to dismiss the case.

Accordingly, this matter will be continued to **July 17, 2024, at 11:00 a.m.** to give the parties time to complete the settlement and effectuate the dismissal. If the adversary is dismissed prior to the continued hearing date, the matter will be concluded and dropped from the calendar.

6. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[23-1024](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT , JURY DEMAND  
5-11-2023    [[1](#)]

RUBIO V. MADERA COMMUNITY  
HOSPITAL  
EILEEN GOLDSMITH/ATTY. FOR PL.

NO RULING.