UNITED STATES BANPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B – Courtroom #13
Fresno, California
Hearing Date: Wednesday, July 10, 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. 24-11004-B-13 **IN RE: ROBERT/CLAUDIA MASON**
LGT-1

CONTINUED 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: Overruled.

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

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 Docs. ##17, 22. In response, the court continued this matter to be heard in conjunction with the valuation motions. Doc. #36.

The court has issued prehearing dispositions granting the valuation motions. *See Items ## 2 and 3 below.* Accordingly, as the valuation issues have been resolved favorably to Debtors, Trustee's Objection is OVERRULED.

2. 24-11004-B-13 **IN RE: ROBERT/CLAUDIA MASON**
PBB-1

MOTION TO VALUE COLLATERAL OF GOODLEAP, LLC
5-30-2024 [17]

CLAUDIA MASON/MV
PETER BUNTING/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.

Robert and Claudia Mason (collectively "Debtors") move for an order valuing an energy generation system and associated components ("the Collateral") at $11,00000 under 11 U.S.C. § 506(a). Doc. #17. The Collateral is encumbered by a purchase money security interest in favor of GoodLeap, LLC ("Creditor"). *Id.* To date, no proof of claim has been filed for this Creditor. Debtors complied with Fed. R. Bankr. P. 3012(b) and 7004(b)(3) by serving the Creditor's registered agent as listed on the website for the California Secretary of State on May 30, 2024. Doc. #21.

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). 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.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim and (2) the debt was incurred within one year preceding the petition date for personal property other than a motor vehicle.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's

interest in such property . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

Section 506(a)(2) states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition date. "Replacement value" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

Here, Debtors declare that they entered into a purchase money security agreement in January of 2022, with no specific date given. Doc. #19. The Debtors filed their petition on April 22, 2024. Doc. #1. Regardless of the specific date that the Debtors and Creditor entered into this security agreement, it was more than one year prior to the filing date. Thus, the elements of § 1325(a)(*) are not met and § 506 is applicable.

Joint debtor Robert Eugene Mason, II declares the Collateral has a replacement value of $11,000.00. Doc. #19. Debtor is competent to testify as to the value of the Collateral. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Creditor's secured claim will be fixed at $11,000.00. The proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

3. 24-11004-B-13 **IN RE: ROBERT/CLAUDIA MASON**
PBB-2

MOTION TO VALUE COLLATERAL OF SERVICE FINANCE COMPANY, LLC
5-30-2024 [22]

CLAUDIA MASON/MV
PETER BUNTING/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.

Robert and Claudia Mason (collectively "Debtors") move for an order valuing a heating, ventilation, and air conditioning system ("the Collateral") at $6,000.00 under 11 U.S.C. § 506(a). Doc. #22. The Collateral is encumbered by a purchase money security interest in favor of Service Finance Company, LLC ("Creditor"). *Id.* To date, no proof of claim has been filed for this Creditor. Debtors complied with Fed. R. Bankr. P. 3012(b) and 7004(b)(3) by serving Creditor's

registered agent as listed on the website for the California Secretary of State on May 30, 2024. Doc. #26.

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). 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.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim and (2) the debt was incurred within one year preceding the petition date for personal property other than a motor vehicle.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

Section 506(a)(2) states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition date. "Replacement value" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

Here, Debtors declare that they entered into a purchase money security agreement in December of 2021, with no specific date given. Doc. #24. The Debtors filed their petition on April 22, 2024. Doc. #1. Regardless of the specific date that the Debtors and Creditor entered into this security agreement, it was more than one year prior to the filing date. Thus, the elements of § 1325(a)(*) are not met and § 506 is applicable.

Joint debtor Robert Eugene Mason, II declares the Collateral has a replacement value of $6,000.00. Doc. #24. Debtor is competent to testify as to the value of the Collateral. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive.

Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Creditor's secured claim will be fixed at $6,000.00. The proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

4. 23-12110-B-13 **IN RE: JORGE/ZENIA CHAVEZ**
SL-3

MOTION TO MODIFY PLAN
5-30-2024 [58]

ZENIA CHAVEZ/MV
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.

Jorge and Zenia Chavez (collectively "Debtors") move for an order confirming Debtors' *Second Modified Chapter 13 Plan* dated May 30, 2024. Docs. ##58,62. The motion indicates that the original plan was never confirmed but the first modified plan was confirmed on January 18, 2024. Doc. #58. The docket, however, reflects that the original plan was confirmed on November 17, 2023, and a First Modified Plan was confirmed on January 23, 2024. Doc. #41.

No party has timely objected.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of any party in interest, including but not limited to creditors, the U.S. Trustee, and the case Trustee, 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

The motion requests that the confirmed plan be modified as follows:

1. Plan payments will be reduced from $2,500.00 down to $1,425.00.
2. The dividend to unsecured creditors will be reduced from 100% down to 20%.
3. The plan provisions otherwise appear to be unchanged.

Compare Doc. #58 and #62.

Debtors aver that this modification is necessary because of a significant reduction in Debtors' income after Mr. Chavez lost his prior job, and his new job pays approximately $5.00 an hour less than his old one. Doc. #61. In addition, his new job does not provide insurance benefits and so Mrs. Chavez must now pay for insurance for the family deducted from her paycheck. Doc. #61. This is confirmed by Debtors' *Amended Schedule I & J*, which reflects a monthly net income of $1,425.21, down from $3,743.66 which was their monthly net income as calculated in the previous *Amended I&J* filed on November 17, 2023. *Compare Doc. #31 and #55.*

No party has objected, and so, this motion is GRANTED. The order shall include the docket control number of the motion, shall reference the plan by the date it was filed, and shall be approved as to form by Trustee.

5. 24-10647-B-13 **IN RE: JORGE/JOSEFINA ALVARADO**
SLL-1

MOTION TO CONFIRM PLAN
5-27-2024 [22]

JOSEFINA ALVARADO/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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

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

DISPOSITION: Continued to August 14, 2024, at 9:30 a.m.

ORDER: The court will issue an order.

Jorge and Josefina Alvarado ("Debtors") move for an order confirming the *First Modified Chapter 13 Plan* dated May 7, 2024. Docs. ##22,26. No plan has been confirmed thus far. Chapter 13 trustee Lilian G. Tsang ("Trustee") timely objected to confirmation of the plan for the following reason(s):

1. Debtors' plan is not feasible as proposed because the plan proposes to pay $2,486.94 per month in distributions to secured creditors and for attorney's fees. With Trustee compensation and expenses, this figure rises to $2,748.00 per month. However, the plan proposes to pay only $2,547.68 per month.
2. Trustee estimates that Debtors have $2,825.00 in non-exempt assets available for distribution to unsecured creditors, which is sufficient to support a 2.7% dividend. The plan, however, proposes a 0% dividend and therefore fails the liquidation test. Also, Trustee has received a copy of Debtors 2023 federal and state tax returns which indicate total

refunds of $2,605.00, whereas Debtors' Schedule A/B listed a refund of $500.00. Trustee avers that she cannot determine if the plan meets the liquidation test until Schedule A/B is amended.

Doc. #34. On July 8, 2024, Debtors filed an *Amended Schedule A/B* which properly lists the tax refunds (Doc. #37), but they have otherwise not responded to the *Objection* yet.

This motion to confirm plan will be CONTINUED to **August 14, 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. 24-11253-B-13 **IN RE: KATHERINE SCONIERS STAPHILL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-13-2024 [28]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the Order to Show Cause.

If the installment fees due at the time of hearing are paid before the hearing, the order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

7. 24-10060-B-13 **IN RE: JENNIFER GITMED**
HDN-2

CONTINUED MOTION TO CONFIRM PLAN
4-16-2024 [36]

JENNIFER GITMED/MV
HENRY NUNEZ/ATTY. FOR DBT.

NO RULING.

8. 24-10060-B-13 **IN RE: JENNIFER GITMED**
HDN-3

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 1
5-24-2024 [53]

JENNIFER GITMED/MV
HENRY NUNEZ/ATTY. FOR DBT.

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

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

DISPOSITION: Overruled without prejudice.

ORDER: The Court will issue the order.

Jennifer Gitmed ("Debtor") objects to Claim #1-3 filed by the Internal Revenue Service ("IRS"), on May 14, 2024, in the sum of $451,612.93 and seeks that it be disallowed in its entirety. Doc. #53.

This objection will be OVERRULED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR") and Federal Rules of Bankruptcy Procedure ("Rule"). Rule 7004(b)(4) and (b)(5) govern service on federal agencies such as the IRS, and they state that such service may be made as follows:

> (4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the

> plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.
>
> (5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.

Fed. R. Bankr. Pro. 7004(b)(4) and (b)(5). Here, the Certificate of Service indicates that service was made to the IRS at two separate post office boxes and to the physical address of an IRS bankruptcy specialist (presumably the specialist assigned to handle Debtor's tax issues). Doc. #56. No service was made to either the Attorney General of the United States or to the office of the U.S. Attorney for this district. *Id.* Accordingly, service was defective, and this objection must be OVERRULED without prejudice.

Additionally, the most recent IRS proof of claim is an amended proof of claim that was filed after Debtor's Objection. *See POC #1-5.* Thus, even without the procedural defect, the court would overrule this objection on mootness grounds.

The court notes that on July 9, 2024, one day before the schedule hearing date, Debtor filed a document which purports to be an *Amended Objection to Claim No. 1-5 of the Internal Revenue Service,* along with accompanying documents. This amended pleading will be disallowed and not considered because it materially alters the original objection while providing virtually no notice and because it is still not served correctly. Also, Debtor admits that she just filed the amended return for 2018 on July 5, 2024, meaning the IRS has not had time to review the amended return let along respond to it in the context of the instant Objection.

Notwithstanding the procedural defects and mootness issues, the court was not inclined to sustain the Objection anyway on the evidence before it, and the court will briefly address its concerns about the substance of the Objection for consideration by Debtor in the event she refiles.

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.

Federal Rule of Bankruptcy Procedure 3001(f) states 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. If a party objects to a proof of claim, the burden of proof is on the objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

Here, Debtor has not suggested that the IRS failed to meet the standards of Rule 3001(f), and the court find no reason to think that it has not done so. As the Ninth Circuit has stated:

> Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they prima facie establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more.

In re Holm, 931 F.2d 620, 623 (9th Cir. 1991)(citing L. King, *Collier on Bankruptcy* § 502.22 (15th ed. 1991)).

Debtor summarizes the claim at issue as follows: The IRS asserts a total claim of $422,673.24. Of that, Debtor characterizes $244,364.18 as "a disputed claim for 12/31/2009 assessed on 1/6/2014" ("the Secured Claim"). The remainder of the claim in the amount of $178,309.06 consists of an estimated priority claim of $105,308.78 ("the Priority Claim"), and an estimated unsecured claim of $35,142.12 ("the Unsecured Claim"), both of which Debtor disputes. Doc. #55 (*Decl. of Jennifer Gitmed*). Debtor asserts that the Secured Claim is barred by the statute of limitations, and that the Priority and Unsecured Claims are estimates based on Debtor's failure to file tax returns for the relevant tax years outlined in the claim. *Id.* Debtor avers that she has since filed the necessary tax returns and there are no taxes due. *Id.* Debtor cites no authority her invocation of the statute of limitations other than stating that she is "informed and believe[s]" that the bar applies. *Id.*

Much of Debtor's arguments against the IRS's claim are based on the Debtor's Declaration which is not supported by any evidence. Debtor says that she filed the delinquent tax returns and that "no taxes

are due," but no actual evidence of the filing of the tax returns accompanies the Objection, let alone evidence supporting Debtor's assertion of having no tax liability at all for the missing tax years. The IRS has not amended its proof of claim reflecting no tax due nor indicated any intention of doing so. In the court's view, the Debtor's declaration, shorn of admissible evidence, is inadequate to overcome the IRS's prima facie case as to the Priority and Unsecured Claims.

Turning to the Secured Claim, 26 U.S.C. 6502 ("IRC § 6502") states:

> (a) Length of period. Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—
>
> (1) within 10 years after the assessment of the tax, or
>
> (2) if—
>
> (A) there is an installment agreement between the taxpayer and the Secretary, prior to the date which is 90 days after the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer at the time the installment agreement was entered into; or
>
> (B) there is a release of levy under section 6343 [26 USCS § 6343] after such 10-year period, prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before such release.
>
> If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable.
>
> (b) Date when levy is considered made. The date on which a levy on property or rights to property is made shall be the date on which the notice of seizure provided in section 6335(a) [26 USCS § 6335(a)] is given.

26 U.S.C.S. § 6502.

Here, the IRS proof of claim states that the Secured Claim arose from tax debts owed for the year ending December 31, 2009. POC #1. However, the taxes owed for that year were not assessed until January 6, 2014. *Id.* It is the *assessment* date that triggers the ten-year statute of limitations. Ten years from January 6, 2014, means that the statute of limitations ended on January 6, 2024. However, according to the documents accompanying the proof of claim, the IRS obtained a lien against Debtor's property on October 24,

2022, and it refiled the lien on January 4, 2024, both within the ten-year statute of limitations.

To refute these facts, Debtor says only that she is "informed and believe[es] the claim is barred by the statute of limitations." Doc. #55. She provides no analysis or authority as to why the IRS liens do not count as collection actions taken within the ten-year window of opportunity. *See U.S. V. Barbier*, 896 F.2d 377 (9th Cir. 1990)(comparing levies and liens as tools for use by IRS against delinquent taxpayers).

This Objection is OVERRULED without prejudice for the reasons outlined above. If Debtor seeks to refile the Objection after correcting for the deficient service, any such Objection must contain sufficient admissible evidence to overcome the prima facie validity of the IRS's proof of claim if Debtor wishes to prevail.

9. 24-10060-B-13 **IN RE: JENNIFER GITMED**
LGT-1

CONTINUED MOTION TO DISMISS CASE
3-26-2024 [22]

LILIAN TSANG/MV
HENRY NUNEZ/ATTY. FOR DBT.

NO RULING.

10. 21-10061-B-13 **IN RE: JACINTO/KAREN FRONTERAS**
KPC-1

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
6-10-2024 [227]

ROCKY TOP RENTALS, LLC/MV
GLEN GATES/ATTY. FOR DBT.
JONATHAN CAHILL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This hearing will proceed as scheduled.

DISPOSITION: Granted as to Debtors. Denied without prejudice as to Trustee unless Trustee waives the procedural defect at the hearing.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation determined at the hearing.

Rocky Top Rentals, LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a leased Portable Storage Building located at 31153 Wild Berry Court, Coarsegold, California ("the Property"). Doc. #227. Movant also

requests waiver of the 14-day of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3).

For the reasons outlined below, this motion will be GRANTED as to the Debtors. The motion will be DENIED WITHOUT PREJUDICE as to the Trustee for improper service unless the Trustee waives the defect at the hearing.

As a threshold matter, the court notes that Movant failed to comply with the Local Rules pertaining to Docket Control Numbers ("DCN"). LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules governing DCNs. These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, it appears that Movant filed this *Motion for Relief* on May 22, 2024, under DCN KPC-1. On May 29, 2024, the court issued a *Memo to File Re: Calendar Correction* because Movant erroneously noticed hearing in this matter for the wrong date. Doc. #225. However, instead of merely filing an Amended notice, Movant refiled the motion and all accompanying documents, again under DCN KPC-1. While this was improper under the Local Rules, the court will overlook the error since it was made inadvertently in the course of correcting the notice error as directed by the court.

However, this was not Movant's only procedural error.

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 any party in interest, including but not limited to the 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). Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

The Debtors filed a Response (Doc. #233), but no other party in interest did, and the defaults of those parties in interest would normally be entered. However, the Amended Notice (Doc. #228) did not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice of hearing to include the names and addresses of persons who must be served with any opposition.

Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business[.]" Rule 7004(b)(1). Rule 7004(b)(9) requires service upon the debtor by

mailing a copy of the pleadings to the address shown in the petition or to such other address as the debtor may designate in a filed writing. Electronic service is precluded here because Rule 9036 "does not apply to any paper required to be served in accordance with Rule 7004." Rule 9036(e).

Here, the certificate of service says that parties were served by "efiling/email." Docs. ##224, 232. Debtor's attorney, Glen Gates, was also served by email in compliance with Local Rule of Practice 7005-1, but this is not permissible under Rule 7004(g).

Accordingly, Chapter 13 trustee Lilian G. Tsang ("Trustee") and Jacinto and Karen Fronteras ("Debtors") were not properly served. Rule 4001(a)(1) requires motions for relief from the automatic stay to be made in accordance with Rule 9014. Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. Since this motion will affect property of the estate, the Chapter 13 Trustee must be served in accordance with Rule 7004.

That said, the Debtors waived the defective service by responding. *See Doc. #233.* As for the Trustee, the court considers it likely that the Trustee will waive this defect as it does not appear that the disposition of the Property will affect the Plan because the lease has expired, and the Debtors were to pay Movant directly. If the Trustee does not wish to waive the defective service, the Trustee may advise the court at the hearing, and the court will take appropriate action.

With the procedural issues addressed, the court turns to the substantive merits of the motion.

Section 4.02 of the *Third Modified Plan* dated February 21, 2024, confirmed April 24, 2024, lists Movant as a party to an executory contract or unexpired lease to be paid $143.12 per month in ongoing payments plus a $31.66 per month dividend to cure an arrearage of $1,897.50. Doc. #211. The moving papers include a copy of the agreement between Karen Fronteras entered into on August 11, 2020, whereby Debtors were obligated to make lease payments in the amount of $292.57 each month for 36 months. Doc. #229.

Movant avers, and Debtors do not dispute, that the lease is expired on its own terms and that Debtors did not make any direct payments as required by the Plan. Doc. #229. Movant further avers, again without dispute from Debtor, that the lease is presently in default in the amount of $8,126.89. *Id.* It appears that payments were made by the Trustee to Movant to cure the *prepetition* arrearage, but there is no evidence before the court of payments by Debtors for the ongoing monthly obligation.

11 U.S.C. § 362(d)(1) 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).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make any post-petition payments on the lease. The Movant has produced unrebutted evidence that Debtors are delinquent at least $8,126.89. Doc. #229. The court further notes that Debtors list the Property on their *Amended Schedule A/B* as having a value of only $3,800.00, substantially less than the alleged delinquency. Doc. #63. Thus, Debtors have no equity in the Property, and Debtors do not argue that the Property is necessary to an effective reorganization.

On July 3, 2024, the Movant filed a *Reply* brief in support of its motion which reiterates the points the court has already made in the course its ruling.

Accordingly, absent objection from the Trustee at the hearing, this motion will be GRANTED, and the automatic stay will be lifted as to the Property. The 14-day stay of Rule 4001(a)(3) will be ordered waived because Debtors has failed to make pre- and post-petition payments to Movant.

In their responsive pleadings, Debtors request the court refer the matter to mediation with "an experienced bankruptcy attorney." Doc. #234. The court declines to do so. First, the parties are free to mediate the dispute following stay relief. The court's inquiry on a stay relief motion is narrow and there appears to be no factual disputes. Second, there may be an issue as to value of the shed versus the cost of removal, but such issue is not relevant on this motion since the Debtors admit their possession of the unit is under a "lease/purchase option." *Id.* Consequently, there is no liquidation value to consider, and the parties are best able to directly address any issues concerning removal of the shed or entering into another agreement. Third, the operative Plan in Section 6.01 revests the property of the estate in the Debtors upon Plan confirmation, and so, at present the Debtors have whatever property interest they have in the shed, and it is not affected directly by the Plan. Once stay relief is granted, there are no remaining bankruptcy issues pertaining to the Property for the court to resolve.

11. 24-11261-B-13 **IN RE: ERICA HERRERA**
LGT-2

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
6-17-2024 [18]

JOEL WINTER/ATTY. FOR DBT.

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

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

DISPOSITION: Continued to August 14, 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 Erica Herrera ("Debtor") on May 9, 2024, on the following basis:

1. Debtor's plan fails to comply with the provision of Chapter 13 and the Bankruptcy Code.
   a. Debtor testified at the 341 meeting that she receives $850.00 each from two tenants renting within her home, but she only disclosed one.
   b. Debtor has failed to file a Schedule I 8a attachment.
   c. Debtor has failed to provide all required paystubs.
   d. The plan does not meet the liquidation test. The plan proposes to pay a 9% dividend to general unsecured creditors. Based on the non-exempt equity held by Debtor, the dividend must increase to 11.89%, with the monthly payment increased to $2,888.66 per month effective month 1.

Doc. #18. On June 27, 2024, the Debtor filed an Amended Schedule I which included the previously omitted rental income and included the 8a attachment, but Debtor has not addressed the other parts of the Objection.

This objection will be CONTINUED to **August 14, 2024, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtor shall file and serve a written response to the Objection not later than **14 days before the hearing.** 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 Debtors' position. Any reply shall be served no later than **7 days before the hearing.**

If the Debtors elect 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 **7 days before the hearing.** If the Debtors do not timely file a modified

plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

12. 23-12066-B-13 **IN RE: DONALD/JOY RICKETTS**
DMG-1

MOTION FOR COMPENSATION FOR D. MAX GARDNER, DEBTORS ATTORNEY(S)
6-13-2024 [62]

D. GARDNER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

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

D. Max Gardner ("Applicant"), attorney for Donald and Joy Ricketts (collectively "Debtors"), requests interim compensation in the sum of **$10,215.34** under 11 U.S.C. § 331, subject to final review pursuant to § 330. Docs. ##62, 65. This amount consists of **$10,170.42** in fees and **$44.92** in expenses from September 18, 2023, through June 13, 2024. *Id.*

No statement from Debtors approving the Application accompanies the moving papers.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED with modifications.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Fed. R. Bankr. P. 2002(a)(6) 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.

Section 3.05 of the *Chapter 13 Plan* dated September 18, 2023, confirmed December 22, 2023, indicates that Applicant was paid $2000.00 prior to filing the case and, subject to court approval, additional fees of $6,000.00 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. ##7, 51. Applicant declares that the entirety of the $2,000.00 retainer was expended on prepetition work. Doc. #65. However, the billing records accompanying the Application are silent as to what fees and expenses were incurred prior to the September 18, 2023, petition date. Doc. #64.

This is Applicant's first fee application. Doc. #62. Applicant represents that he was the only person to provide legal services for Debtors. *Id.* Applicant provided 26.30 billable hours at $385 per hour, totaling **$10,170.42** in fees. Docs. ##62, 64. Applicant also incurred **$44.92** in expenses:

Postage	$17.92
Reproduction	$27.00
Total Expenses	**$44.92**

Id. These combined fees and expenses total **$10,215.34.**

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: case administration, fee/employment objections, litigation, meetings of creditors, and relief from stay proceedings. Docs. ##62, 64. The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition.

However, certain aspects of this Application give the court pause. First, Applicant acknowledges that he received a $2,000.00 retainer prepetition, and he avers that all of it "was utilized for pre-petition work." Doc. #65. However, the billing records submitted commence on the filing date and give no indication of what work was performed or what attorney fees or expenses were incurred prepetition. Doc. #64.

Second, the confirmed plan calls for a maximum of $6,000.00 to be paid through the plan. Doc. #7. Any additional attorney's fees awarded would have to be paid by Debtors outside the plan and must be approved by the court utilizing the lodestar method. Applicant does not address the lodestar method or its application to this case, and the court is reticent to comb the billing records and come to its own lodestar analysis without input from Applicant.

Moreover, the plan contains no special provisions which contemplate attorneys' fees beyond $6,000.00 to be paid by Debtors outside the plan and/or post-discharge. *Id.* Likewise, the employment agreement that governs the attorney-client relationship in this case is not included as an exhibit, and no statement by Debtors indicating that they read and approved the Application is among the moving papers. Consequently, the court has some doubts as to whether, on the record before it, it can grant an award of attorney's fees beyond the $6,000.00 to be paid through the plan. Indeed, the court is reticent to grant even that much of an award without any evidence demonstrating that the entirety of the $2,000.00 retainer was expended prepetition.

This matter will go forward as scheduled. The court is inclined to GRANT the motion at least in part by allowing up to $6,000.00 in attorney's fees, subject to Applicant satisfactorily resolving the court's concerns about the retainer and the Application. The balance of the fees requested is DENIED without prejudice to reapplication after an appropriate amendment to the plan. The extent to which any attorney's fees awarded shall be paid through the plan and/or directly by Debtors will be discussed at the hearing.

13. 24-10769-B-13 **IN RE: NANCY/STEVE WILLIAMS**
LGT-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
6-3-2024 [32]

SUSAN SILVEIRA/ATTY. FOR DBT.

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

DISPOSITION: Withdrawn

No order is required.

On July 3, 2024, the Trustee withdrew this Objection to Confirmation. Accordingly, this Objection is WITHDRAWN.

14. 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.
CONT'D FROM 6/20/24 WITHOUT AN ORDER
RESPONSIVE PLEADING

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

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

No order is required.

Pursuant to the order previously entered by the court on June 20, 2024, this hearing is CONTINUED to July 17, 2024, at 9:30 a.m. *See Doc. #52.*

15. 24-10473-B-13 **IN RE: HILDA CAMPOS**
SAD-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-28-2024 [34]

U.S. BANK NATIONAL
ASSOCIATION/MV
SHANNON DOYLE/ATTY. FOR MV.
DISMISSED 5/30/24

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on May 30, 2024. Doc. #42. The motion will be DENIED AS MOOT.

16. 24-11607-B-13 **IN RE: MARY TRUJILLO**
DCJ-1

MOTION TO EXTEND AUTOMATIC STAY
6-26-2024 [17]

MARY TRUJILLO/MV
DAVID JOHNSTON/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Mary Trujillo ("Debtor") requests an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #17.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

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 set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

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. 24-10203 ("the Prior Case"). That case was filed on January 30, 2024, and was dismissed on April 24, 2024, for Debtor's failure to provide certain documents to the Trustee and a failure to set a hearing on the Chapter 13 plan. Doc. #19. The instant case was filed on June 11, 2024. Doc. #1. The automatic stay will expire on July 11, 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. The subsequently filed case is presumed to be filed in bad faith as to all creditors because the Prior Case was dismissed within such 1-year period after Debtor failed to file documents required by this title and by the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney). 11 U.S.C. § 362(c)(3)(i)(II).

The motion is accompanied by a Declaration from Debtor's attorney, David C. Johnston ("Johnston"), who forthrightly admits that the dismissal of the Prior Case was due entirely to negligence on his part as he failed to note the electronic service of the Trustee's *Motion to Dismiss* in the Prior Case and so did not calendar it or respond to it. Doc. #19. Johnston declares that, had he been aware of the Trustee's motion, he would have provided the requested documents and cooperated with Trustee to resolve the issues in the Prior Case to avoid dismissal. *Id.*

Johnston argues that the presumption of bad faith is inapplicable here because the dismissal of the Prior Case was due to his negligence rather than any conduct or omission of the Debtor. *Id. See also § 362(c)(3)(i)(II)(indicating that bad faith finding may not apply where dismissal was due to attorney negligence).*

Johnston further declares that there has been a material change in Debtor's financial circumstances, as Debtor's daughter paid off what

was owed on Debtor's vehicle, thereby eliminating the prior vehicle payments from Plan distribution. *Id.* A comparison of the plan and Schedule I in the Prior Case (Prior Case Doc. ##21,23) with the plan in the instant case (Docs. ##11, 12) reflects the following:

1. In both cases, Debtor proposes a 36-month plan, with a 0% distribution to unsecured creditors.
2. In the Prior Case, the plan proposed a monthly payment of $220.00. In the instant case, it is increased to $225.00.
3. Debtor's direct payment to Class 4 creditor Ford Motor Company has been removed.
4. Johnson declares that he is charging Debtor a total of $4,000.00 to represent Debtor in the instant bankruptcy which is less than half the "no-look fee" for a nonbusiness case. *See LBR 2016(c)(1)(A).* While this averment is consistent with the plan pending in the current case, the court notes that the *Disclosure of Compensation of Attorney for Debtor(s)* states that Johnston has agreed to accept $8,000.00 for legal services, with an outstanding $6,313.00 to be paid through the plan. An amended filing may be necessary to bring Johnston's disclosure statement into conformity with the plan and his representations accompanying this motion.
5. In the Prior Case, Debtor's Schedule I reflected a monthly net income of $220.00. In the instant case, Schedule I reflects a monthly net income of $250.00.

Based on the moving papers and the record, the presumption of bad faith appears to be inapplicable because the dismissal was due to attorney negligence. Alternatively, if the presumption does apply, it appears to have been rebutted by clear and convincing evidence because the prior dismissal may have been due to counsel's inadvertence and 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).

17. 24-11319-B-13 **IN RE: JAIME YBARRA AND LUZ RIVERA DE YBARRA**
LGT-1

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
6-25-2024 [16]

LILIAN TSANG/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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

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

DISPOSITION: Continued to August 14, 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 Jaime Ybarra and Luz Rivera de Ybarra (collectively "Debtors") on May 9, 2024, on the following basis:

1. Debtors may have additional disposable income to pay towards the plan. No income is reported for the Joint Debtor on their Statement of Financial Affairs. Debtors have testified that they have additional assets not included in their Schedules, including a savings account and sports collectibles. Finally, Trustee's review of Debtors' bank statements reflects average deposits higher than the totals reported on Debtors' Schedule I. Trustee requests a detailed analysis of how the figures on Schedule I were computed.

Doc. #16. On July 4, 2024, Debtors filed an Amended Schedule I, as well as a response *inter alia* requesting a continuance to allow for further review of Debtors' bank records relevant to the disposition of the sports memorabilia. Debtors propose to provide additional information upon completion of the review, and the continuance is necessary to give the Trustee opportunity to respond.

This objection will be CONTINUED to **August 14, 2024, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtor shall file and serve a more complete written response to the Objection outlining their findings regarding the bank records at issue not later than **14 days before the hearing**. 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 Debtors' position. Any reply shall be served no later than **7 days before the hearing**.

11:00 AM

1. 21-12407-B-13 **IN RE: MANUELA BETTENCOURT**
   24-1011 CAE-1

   STATUS CONFERENCE RE: AMENDED COMPLAINT
   5-17-2024 [7]

   BETTENCOURT V. NAVIENT
   SOLUTIONS, LLC ET AL
   SUSAN SILVEIRA/ATTY. FOR PL.

NO RULING.

2. 20-10809-B-11 **IN RE: STEPHEN SLOAN**
   21-1039

   CONTINUED SCHEDULING CONFERENCE RE: AMENDED COMPLAINT
   10-27-2022 [58]

   SANDTON CREDIT SOLUTIONS
   MASTER FUND IV, LP V. SLOAN ET
   KURT VOTE/ATTY. FOR PL.

NO RULING.

3. 23-12066-B-13 **IN RE: DONALD/JOY RICKETTS**
   23-1038 CAE-1

   CONTINUED STATUS CONFERENCE RE: COMPLAINT
   9-21-2023 [1]

   C.F. V. RICKETTS
   CHANTAL TRUJILLO/ATTY. FOR PL.

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

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

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

ORDER: The court will issue the order.

Plaintiff, C.F., filed a status report. Doc. #30. Plaintiff represents that the Kern County Superior Court trial in this matter is scheduled for mid-September 2025.

The court sees no reason to hold a hearing now. Plaintiff noted the result of the trial will affect this adversary proceeding. Notably, the court did not find an order modifying the automatic stay on the docket of the main case permitting limited relief as to claims

against co-debtor, Donald Ricketts. The court will leave it to the parties to resolve that issue.

Plaintiff, C.F., to file and serve a status report on or before November 27, 2024.