



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, July 18, 2024
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

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

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

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [23-11701](#)-A-13 **IN RE: ENRIQUE ARTURO IBARRA OLGUIN AND NORMA CORTEZ IBARRA**
[SLL-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STEPHEN L. LABIAK FOR
STEPHEN L. LABIAK, DEBTORS ATTORNEY(S)
6-17-2024 [\[52\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Stephen L. Labiak ("Movant"), counsel for Enrique Arturo Ibarra Olguin and Norma Cortez Ibarra (together, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation in the amount of \$8,920.00 and reimbursement for expenses in the amount of \$111.74 for services rendered from July 30, 2023 through June 1, 2024. Doc. #52. Debtors' confirmed plan provides, in addition to \$1,000.00 paid prior to filing the case, for \$8,000.00 in attorney's fees to be paid through the plan. Plan, Doc. ##45, 60. No prior fee application has been filed. Debtors consent to the amount requested in Movant's application. Decl. of Norma Cortez Ibarra, Doc. #54.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) prepetition consultation with Debtors and fact gathering, including independently verifying information; (2) preparing voluntary petition, schedules and related forms and amendments thereto; (3) preparing for and attending 341 meeting of creditors; (4) preparing and prosecuting Debtors' original and first modified plans; (5) claim administration and claim objections; (6) preparing the fee

application; and (7) general case administration. Exs. B, C & D. Doc. #56. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$8,920.00 and reimbursement for expenses in the amount of \$111.74 to be paid in a manner consistent with the terms of the confirmed plan.

2. [22-12163](#)-A-13 **IN RE: TINA GARCIA**
[SL-1](#)

EVIDENTIARY HEARING RE: OBJECTION TO CLAIM OF CHICAGO TITLE INSURANCE
COMPANY, CLAIM NUMBER 6
4-11-2023 [\[44\]](#)

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

NO RULING.

3. [19-11273](#)-A-13 **IN RE: JIMMIE/DONNA CURTIS**
[PK-1](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, WAIVE SECTION 1328
CERTIFICATE REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY,
AS TO DEBTOR
6-27-2024 [\[44\]](#)

DONNA CURTIS/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date 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 deny 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.

Donna Jo Curtis¹ ("Movant"), joint debtor in this chapter 13 case and the surviving spouse of Jimmie D. Curtis ("Debtor"), requests the court name Movant as the successor to the deceased Debtor, permit continued administration of

¹ While the Declaration of Donna Jo Curtis, Doc. #46, is submitted by Movant in support of this motion, the motion itself names the moving party as Robert Barker. Doc. #44. Thus, the court assumes the motion mistakenly names Mr. Barker instead of naming the correct moving party, Donna Jo Curtis.

this chapter 13 case, and waive the § 1328 certification requirements for Debtor. Doc. #44. None of the three requests for relief are supported by necessary evidence. Doc. ##44, 46, 47.

LBR 9014-1(d)(3)(D) provides that "[e]very motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4)." The only support for the relief requested in the motion is the Certificate of Death of Debtor. Ex. A, Doc. #47. The declaration of Movant filed in support of the motion provides testimony in support of a motion to approve a compromise, but does not contain testimony to support the relief requested in this motion.

Upon the death of a debtor in chapter 13, Federal Rule of Bankruptcy Procedure 1016 provides that the case may proceed and be concluded in the same manner, so far as possible, as though the death had not occurred upon a showing that further administration is possible and in the best interest of the parties. The motion fails to provide any evidence explaining how or why further administration of this chapter 13 case is possible and is in the best interests of the parties should the court name Movant as the successor to Debtor. Debtor's death certificate, on its own, is insufficient to establish the showing required under Federal Rule of Bankruptcy Procedure 1016.

With respect to a waiver of the certification requirements for entry of discharge under 11 U.S.C. § 1328 as to Debtor only, Movant has not provided any evidence explaining whether Debtor met the post-petition financial education requirements before he died.

Accordingly, this motion is DENIED WITHOUT PREJUDICE.

4. [23-10691](#)-A-13 **IN RE: KAYE KIM**
[YW-3](#)

MOTION TO CONFIRM PLAN
6-6-2024 [[174](#)]

KAYE KIM/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

5. [24-10297](#)-A-13 **IN RE: DOROTHY MCKINLEY**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
3-26-2024 [[16](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on July 11, 2024. Doc. #41.
Therefore, this objection will be OVERRULED AS MOOT.

6. [24-10297](#)-A-13 **IN RE: DOROTHY MCKINLEY**
[LGT-2](#)

MOTION TO DISMISS CASE
6-14-2024 [[35](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on July 11, 2024. Doc. #41.
Therefore, this motion will be DENIED AS MOOT.

1. [24-10440](#)-A-7 **IN RE: ZAC FANCHER**
[24-1013](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
5-23-2024 [[1](#)]

FANCHER V. TULARE COUNTY RESOURCE MANAGEMENT AGENCY
REISSUED SUMMONS FOR 7/31/24

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

DISPOSITION: Dropped from calendar

No order required.

A reissued summons was issued on June 6, 2024, with a status conference date of July 31, 2024 at 3:00 p.m. Doc. #9. Therefore, this status conference will be dropped from calendar.

2. [22-11499](#)-A-7 **IN RE: STEVEN HARO**
[22-1026](#) [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
3-26-2024 [[66](#)]

HIGH BAND CONSTRUCTION INC. V. HARO ET AL
BRENT MEYER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.