

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday July 28, 2022
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

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. [20-10608](#)-A-13 **IN RE: TRISHALL WASHINGTON**
[TCS-5](#)

MOTION TO MODIFY PLAN
6-13-2022 [\[82\]](#)

TRISHALL WASHINGTON/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

2. [17-13326](#)-A-13 **IN RE: LAO YANG AND BAO VANG**
[FW-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
6-27-2022 [\[43\]](#)

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Fear Waddell, P.C. ("Movant"), counsel for Lao Choua Yang and Bao Vang (together, "Debtors"), the debtors in this chapter 13 case, requests allowance of final compensation in the amount of \$2,930.00 and reimbursement for expenses in the amount of \$175.27 for services rendered from May 1, 2018 through June 16, 2022. Doc. #43. Debtors' confirmed plan provides, in addition to \$1,500.00 paid prior to filing the case, for \$8,000.00 in attorney's fees. Plan, Doc. ##5, 28. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of \$2,122.00 and reimbursement for expenses totaling \$344.01. Order, Doc. #39.

Debtors consent to the amount requested in Movant's application. Ex. E, Doc. #45.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing various documents regarding annual review; (2) preparing for discharge and case closing; (3) preparing and filing final fee application; and (4) general case administration. Ex. A-D, Doc. #45. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, in addition to compensation requested by this motion in the amount of \$2,930.00 and reimbursement for expenses in the amount of \$175.27 to be paid in a manner consistent with the terms of the confirmed plan.

3. [17-12029](#)-A-13 **IN RE: SAMUEL/YOLANDA BLANCO**
[PBB-2](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, AND APPOINTMENT OF REPRESENTATIVE AS TO DEBTOR 6-24-2022 [\[48\]](#)

YOLANDA BLANCO/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.

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

Yolanda Topete Blanco ("Movant"), the surviving spouse of Samuel Duarte Blanco ("Joint Debtor") and joint debtor in this chapter 13 case, requests the court name Movant as the successor to the deceased Joint Debtor, permit the continued

administration of this chapter 13 case and waive the § 1328 certification requirements. Doc. #48.

Upon the death of a debtor in Chapter 13, Federal Rule of Bankruptcy Procedure 1016 provides that the case may be dismissed or 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. Joint Debtor died on June 2, 2019 of natural causes. Decl. of Yolanda Topete Blanco, Doc. #50; Ex. A, Doc. #45. Movant declares that she is qualified to represent Joint Debtor's estate in the bankruptcy case. Blanco Decl., Doc. #50. The plan payments required under the confirmed plan in this case have been completed. Doc. #52. Appointing Movant to be representative to proceed with case administration is in the best interest of the parties and creditors. No objections have been filed in response to this motion.

With respect to a waiver of Joint Debtor's certification requirements for entry of discharge under 11 U.S.C. § 1328, Joint Debtor failed to meet the post-petition financial education requirements before Joint Debtor died. Blanco Decl., Doc. #50. Joint Debtor's death demonstrates an inability to provide certifications required, and the certification requirements will be waived.

Accordingly, Movant's application to be appointed representative of Joint Debtor's estate for the further administration of this bankruptcy case is GRANTED. Movant's motion to waive Joint Debtor's § 1328 certification requirements is GRANTED.

4. [17-13446](#)-A-13 **IN RE: LEONEL TERA**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
6-23-2022 [\[84\]](#)

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Fear Waddell, P.C. ("Movant"), counsel for Leonel Lopez Tera ("Debtor"), the debtor in this chapter 13 case, requests allowance of final compensation in the amount of \$6,207.50 and reimbursement for expenses in the amount of \$171.02 for services rendered from June 1, 2018 through June 20, 2022. Doc. #84. Debtor's confirmed plan provides, in addition to \$7,190.00 paid prior to filing the case, for \$18,000.00 in attorney's fees. Plan, Doc. #31, 58. Two prior fee applications have been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the combined amount of \$23,370.00 and reimbursement for expenses totaling \$551.46. Orders, Doc. #66, 74. Debtor consents to the amount requested in Movant's application. Ex. E, Doc. #86.

From the prior fee applications granted, Movant received \$18,000.00 through the plan from the chapter 13 trustee. Orders, Doc. #58, 66, 74. If additional funds are available in the plan, Movant requests for the trustee to pay those additional funds as administrative expenses. Doc. #84. The plan provides that attorney fees that remain unpaid after completion of the plan are nondischargeable if certain conditions are met, and Movant is allowed to work with Debtor after completion of the plan for payment of any remaining attorney fees. Plan, Doc. #31.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and analyzing various documents regarding claim issues; (2) preparing and filing an opposition to a motion to dismiss; (3) preparing and filing a final fee application; (4) preparing for discharge and case closing; and (5) general case administration. Exs. A-D, Doc. #86. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim bases, in addition to compensation requested by this motion in the amount of \$6,207.50 and reimbursement for expenses in the amount of \$171.02 to be paid in a manner consistent with the terms of the confirmed plan.

5. [17-13065](#)-A-13 **IN RE: AMANDEEP RANDHAWA**
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
6-14-2022 [\[142\]](#)

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Fear Waddell, P.C. ("Movant"), counsel for Amandeep Singh Randhawa ("Debtor"), the debtor in this chapter 13 case, requests allowance of final compensation in the amount of \$5,824.00 and reimbursement for expenses in the amount of \$270.89 for services rendered from July 1, 2018 through June 8, 2022. Doc. #142. Debtor's confirmed plan provides, in addition to \$5,000.00 paid prior to filing the case, for \$13,500.00 in attorney's fees. Plan, Doc. ##96, 109. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of \$20,006.00 and reimbursement for expenses totaling \$1,014.18. Order, Doc. #133. Debtor consents to the amount requested in Movant's application. Ex. E, Doc. #145.

From the prior fee application granted, Movant received \$13,500.00 through the plan from the chapter 13 trustee. Orders, Doc. ##109, 133. If additional funds are available in the plan, Movant requests for the trustee to pay those additional funds as administrative expenses. Doc. #142. The plan provides that attorney fees that remain unpaid after completion of the plan are nondischargeable if certain conditions are met, and Movant is allowed to work with Debtor after completion of the plan for payment of any remaining attorney fees. Plan, Doc. #96.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and analyzing various documents regarding claim issues; (2) preparing and filing an opposition to a motion to dismiss; (3) preparing and filing a final fee application; (4) preparing for discharge and case closing; and (5) general case administration. Exs. A-D, Doc. #145. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, in addition to compensation requested by this motion in the amount of \$5,824.00 and reimbursement for expenses in the amount of \$270.89 to be paid in a manner consistent with the terms of the confirmed plan.

6. [21-12272](#)-A-13 **IN RE: AMANDA MANUEL**
[JNV-4](#)

MOTION TO CONFIRM PLAN
6-7-2022 [\[52\]](#)

AMANDA MANUEL/MV
JASON VOGELPOHL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

7. [21-12272](#)-A-13 **IN RE: AMANDA MANUEL**
[MHM-2](#)

MOTION TO DISMISS CASE
6-10-2022 [\[59\]](#)

MICHAEL MEYER/MV
JASON VOGELPOHL/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on July 17, 2022. Doc. #65.

8. [22-11072](#)-A-13 **IN RE: GENEVA FARR**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-12-2022 [[19](#)]

DUSHAWN JOHNSON/ATTY. FOR DBT.
\$313.00 FILING FEE PAID ON 7/13/22

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees now due have been paid. The case shall remain pending.

9. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[MHM-9](#)

CONTINUED MOTION TO DISMISS CASE
5-27-2022 [[396](#)]

MICHAEL MEYER/MV
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on July 26, 2022. Doc. #434.

10. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[SN-11](#)

MOTION TO MODIFY PLAN
6-10-2022 [[406](#)]

SYLVIA NICOLE/MV
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on July 22, 2022. Doc. #431.

11. [22-10782](#)-A-13 **IN RE: THURMAN ROGERS**
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
6-30-2022 [\[20\]](#)

DISMISSED 7/14/22

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 14, 2022. Doc. #29.
Therefore, this motion will be DENIED AS MOOT.

12. [22-10185](#)-A-13 **IN RE: TIMOTHY CORNELL**
[SL-1](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
6-30-2022 [\[19\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Scott Lyons, Attorney at Law ("Movant"), counsel for Timothy Carter Cornell ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$8,287.00 and reimbursement for expenses in the amount of \$532.68 for services rendered June 17, 2021 through June 29, 2022. Doc. #19. Debtor's confirmed plan provides, in addition to \$1,963.00 paid prior to filing the case, for \$12,000.00 in attorney's fees. Plan, Doc. ##3, 14. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Doc. #19.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's first modified plan; (2) appearing at 341 meeting of creditors; (3) communicating with Debtor's creditors and the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Exs. A & B, Doc. #21. 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 requested by this motion in the amount of \$8,287.00 and reimbursement for expenses in the amount of \$532.68 to be paid in a manner consistent with the terms of the confirmed plan.

13. [22-10785](#)-A-13 **IN RE: STUART WONG**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MUFG UNION BANK, N.A.
6-23-2022 [\[25\]](#)

MUFG UNION BANK N.A./MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

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 18, 2022. Doc. #47.
Therefore, this motion will be OVERRULED AS MOOT.

14. [22-10785](#)-A-13 **IN RE: STUART WONG**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
6-30-2022 [\[30\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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 18, 2022. Doc. #47.
Therefore, this motion will be OVERRULED AS MOOT.

15. [22-10785](#)-A-13 **IN RE: STUART WONG**
[NLL-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
7-5-2022 [\[39\]](#)

WELLS FARGO BANK, N.A./MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
NANCY LEE/ATTY. FOR MV.

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 18, 2022. Doc. #47.
Therefore, this motion will be OVERRULED AS MOOT.

16. [22-10787](#)-A-13 **IN RE: ROSEMARIE FIGUEROA**
[CCR-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LANDMARK COLLECTION
SERVICES, INC.
6-21-2022 [\[16\]](#)

LANDMARK COLLECTION SERVICES, INC./MV
ARASTO FARSAD/ATTY. FOR DBT.
CHERYL ROUSE/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

MOTION TO TRANSFER CASE/PROCEEDING TO ANOTHER DISTRICT
6-28-2022 [\[21\]](#)

ARASTO FARASAD/ATTY. FOR DBT.
RESPONSIVE PLEADING

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 an order after the hearing.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor filed timely written opposition on July 14, 2022. Doc. #29. The matter will proceed as scheduled.

Michael H. Meyer ("Trustee"), the chapter 13 standing trustee, moves to transfer the bankruptcy case of Rosemarie Bustos Figueroa ("Debtor") from the United States Bankruptcy Court for the Eastern District of California to the United States Bankruptcy Court for the Northern District of California. Doc. #21. Debtor opposes the motion. Doc. #29.

Section 1408 of Title 28 provides that a bankruptcy case may be commenced in the district court for the district:

in which the domicile, residence, principal place of business in the United States, or the principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district[.]

28 U.S.C. § 1408(1). Based on information learned at Debtor's 341 meeting of creditors, Debtor resided in San Mateo, California from 2018 through April 2022, and moved to Fresno, California on May 1, 2022, just nine days prior to filing this bankruptcy case. Decl. of Michael H. Meyer, Doc. #23.

Debtor opposes the motion asserting that Debtor intended and was planning on moving to Fresno during the 180-day period prior to filing her bankruptcy petition, and so Debtor believes that her domicile to be Fresno for that period. Doc. #29. However, this assertion is inconsistent with objective facts. Donald v. Curry (In re Donald), 328 B.R. 192, 203 (B.A.P. 9th Cir. 2005) ("One's own declarations regarding intent are pertinent but ordinarily will be substantially discounted by the court when inconsistent with objective facts."). Debtor's own declaration states that Debtor did not sign a lease in Fresno until April 3, 2022, and Debtor lived in San Mateo, California until commencing to move to Fresno, California on or about April 16, 2022, with a final move on May 1, 2022. Decl. of Rosemarie Bustos Figueroa ¶ 5, Doc. #30. Thus, Debtor's belongings were in San Mateo for the vast majority of the 180-day period before Debtor filed her bankruptcy case in this court. In addition, Debtor did not start to inform appropriate companies and agencies of her new

address until early June 2022, including re-registering her California driver's license and updating her car insurance information. Debtor Decl. ¶ 7, Doc. #30. Further, Debtor was employed in Burlingame, California, which is near San Mateo, California, for two and one-half years before she filed her bankruptcy petition. Schedule I, Doc. #1. Based on the objective facts, the court finds that Debtor lived in San Mateo, California, and her principal assets were located in San Mateo, California, for at least 155 of the 180 days prior to filing her bankruptcy case in this court. San Mateo, California is located in San Mateo County, California and is part of the Northern District of California. Thus, under 28 U.S.C. § 1408(1), proper venue for Debtor's case is in the United States Bankruptcy Court for the Northern District of California, not in this court.

While the opposition cites to 28 U.S.C. § 1412 and seeks to apply a totality of circumstances to keep venue in this court, the court agrees with the cases holding that 28 U.S.C. § 1412 only applies to cases that were filed in the proper venue. See, e.g., Thompson v. Greenwood, 507 F.3d 4164 (6th Cir. 2007). As explained by the Sixth Circuit,

(1) the venue requirements of 28 U.S.C. § 1408 are mandatory, not optional; (2) 28 U.S.C. § 1412 applies only to bankruptcy cases filed in a proper venue; (3) 28 U.S.C. § 1406 applies to cases, including bankruptcy cases filed in an improper venue; and (4) Federal Rule of Bankruptcy Procedure 1014(a)(2) must be interpreted as authorizing the transfer of an improperly venued case only to a district in which the case could have originally been brought, and only in the interest of justice, in accordance with the plain language of § 1406.

Id. at 424 (citing to Donald, 328 B.R. at 428). Since Debtor's case was not filed in the proper venue, 28 U.S.C. § 1412 does not apply to the motion, and this court is limited to either dismissing Debtor's bankruptcy case or transferring the case to the United States Bankruptcy Court for the Northern District of California under 28 U.S.C. § 1406(a).

Section 1406(a) of title 28 provides that "[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interests of justice, transfer such case to any district in which it could have been brought." 28 U.S.C. § 1406(a). Federal Rule of Bankruptcy Procedure 1014(a)(2) allows this court, on timely motion of a party in interest, to dismiss a bankruptcy case filed in an improper district or to transfer the case to another district if the court determines that transfer is in the interest of justice or for the convenience of the parties. Based on Debtor's request that this bankruptcy case remain in this district, the court assumes that Debtor prefers to have her bankruptcy case transferred to the United States Bankruptcy Court for the Northern District of California instead of being dismissed.

Assuming that is the case, Trustee's motion is GRANTED. Debtor's bankruptcy case will be transferred to the United States Bankruptcy Court for the Northern District of California.

11:00 AM

1. [20-13822](#)-A-7 **IN RE: FAUSTO CAMPOS AND VERONICA NAVARRO**
[21-1006](#)

PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
5-6-2021 [\[18\]](#)

RAMIREZ V. CAMPOS
PAMELA THAKUR/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [19-12047](#)-A-7 **IN RE: ROBERT FLETCHER**
[19-1097](#) [CAE-1](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
9-30-2019 [\[8\]](#)

FLETCHER V. FLETCHER ET AL
DAVID JENKINS/ATTY. FOR PL.
DISMISSED 4/28/22

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on April 28, 2022. Doc. #163.

3. [19-13871](#)-A-7 **IN RE: JENNA LONG**
[22-1009](#) [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
6-2-2022 [\[11\]](#)

LONG V. U.S. DEPARTMENT OF EDUCATION ET AL
NANCY KLEPAC/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

At the adversary proceeding status conference, the parties should be prepared to explain to the court why they have not filed the discovery plan as required by the Order to Confer on Initial Disclosures and Setting Deadlines filed in this adversary proceeding on March 31, 2022. Doc. #5.