

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, August 12, 2021
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 will begin 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. [20-10301](#)-A-13 **IN RE: HELIBERTO ELIZONDO**
[MHM-5](#)

CONTINUED OBJECTION TO PROFESSIONAL FEES OF GARY S. SAUNDERS
6-24-2021 [\[103\]](#)

MICHAEL MEYER/MV
TRANG NGUYEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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). Opposition was raised at the initial hearing held on the motion, and the court continued the hearing to permit written opposition to be filed. Doc. #111. On July 29, 2021, substituted counsel for the debtor timely filed written opposition. Doc. #112. No reply has been filed by the moving party as permitted by the court. Doc. #111.

Michael H. Meyer ("Trustee"), the chapter 13 trustee in the bankruptcy case of Heliberto Elizondo ("Debtor"), objects to the attorney fee compensation for Gary S. Saunders ("Saunders") of Saunders Law Group, Ltd., Debtor's attorney of record until July 15, 2021. Tr.'s Obj., Doc. #103. On July 15, 2021, attorney Trang P. Nguyen ("Nguyen") of Saunders Law Group, Ltd. substituted in as attorney of record for Debtor. Doc. #109.

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). LBR 2016-1(a) authorizes a debtor's attorney in a chapter 13 case to: (1) accept fixed fees without court approval under Subpart (c); or (2) opt out of Subpart (c) and request compensation in accordance with 11 U.S.C. §§ 329 and 330. Subpart (c) permits a maximum fee of \$4,000 (the "no-look fee") for nonbusiness cases that "will fairly compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed." LBR 2016-1(c).

Trustee objects to Saunders' compensation on the grounds that Saunders was suspended from the practice of law. Doc. #103. Saunders began serving a 90-day suspension from the State Bar of California on April 28, 2021. Doc. #102. Additionally, Saunders' license to practice was suspended for a two-year period with the execution of that period stayed and Saunders placed on probation for one year. Doc. #103. In the present case, Saunders opted for a fixed fee of \$4,000 pursuant to LBR 2016-1(c). As of the date of the motion, Saunders has received the following payments:

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December 3, 2019 Retainer	\$ 1,157.00
Trustee Disbursement	1,416.16
Total	\$ 2,573.16

The chapter 13 plan in this case was confirmed on October 2, 2020, all claim bar dates have passed, and the Notice of Filed Claims was filed on November 18, 2020. Decl. of Michael H. Meyer, Doc. #105. Trustee asks the court to reduce the no-look fee payable to Saunders.

Nguyen opposes Trustee's motion first because Saunders' suspension, which has already run its course, did not hinder the representation provided to Debtor. Nguyen also argues that Debtor's caseload was administered by Nguyen and other attorneys at Saunders Law Group, Ltd. Nguyen argues that Saunders' temporary suspension did not prevent the Saunders Law Group, Ltd. from representing Debtor and that Debtor's counsel has earned the entire no-look fee.

Section 329 of the Bankruptcy Code permits the court to cancel an agreement between a debtor and their attorney or order the return of payment from the debtor's attorney if an attorney's compensation, paid or agreed to be paid, exceeds the reasonable value of any such services rendered or to be rendered in connection with the case. 11 U.S.C. § 329. Further, LBR 2016-1(c)(5) authorizes the court to examine the no-look fee "any time prior to entry of a final decree, if such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan is confirmed or denied confirmation."

Here, it was not foreseen that Saunders would face suspension when this chapter 13 plan was confirmed. The \$4,000 no-look fee was intended to compensate Saunders for all pre-confirmation services and most post-confirmation services. In the Disclosure of Compensation of Attorney for Debtor (Form 2030), Saunders indicated that he may share compensation with members and associates of Saunders Law Group, Ltd. Doc. #1; Doc. #72. Prior submissions filed on Debtor's behalf consistently named Saunders as a member of Saunders Law Group, Ltd., and Nguyen, an attorney with Saunders Law Group, Ltd., has substituted in as counsel for Debtor. Although Saunders personally may not be able to provide legal services to Debtor during his suspension, there is nothing preventing Nguyen and Saunders Law Group, Ltd. from providing post-confirmation legal services to Debtor. Saunders' post-confirmation suspension was not anticipated. However, the court finds that Saunders' suspension has not rendered the approved no-look fee improvident. Nothing on the record indicates that Debtor has been harmed by Saunders' suspension, and the no-look fee does not exceed the reasonable value of the services to be rendered by Saunders, Nguyen and the Saunders Law Group, Ltd. in connection with this case.

Therefore, the court will not exercise its authority to examine and reduce the no-look fee. The court finds the no-look fee is reasonable compensation and that the approval of the no-look fee was not improvident.

Accordingly, Trustee's objection is OVERRULED.

2. [20-13407](#)-A-13 **IN RE: ANGIE BEASWORRICK**
[LAR-1](#)

MOTION TO MODIFY PLAN
7-2-2021 [\[30\]](#)

ANGIE BEASWORRICK/MV
LAUREN RODE/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 16, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The Chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the Chapter 13 plan. Tr.'s Opp'n, Doc. #36. Unless this case is voluntarily converted to Chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than August 26, 2021. 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 debtor's position. Trustee shall file and serve a reply, if any, by September 2, 2021.

If the debtor elects to withdraw this 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 September 2, 2021. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

3. [16-13349](#)-A-13 **IN RE: THOMASITO DEL CASTILLO**
[FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
7-13-2021 [\[38\]](#)

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 debtors, 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 Thomasito del Castillo ("Debtor"), the debtor in this chapter 13 case, requests allowance of final compensation in the amount of \$5,635 and reimbursement for expenses in the amount of \$313.01 for services rendered June 1, 2017 through discharge and case closing. Doc. #38; Ex. A, Doc. #41. Debtor's confirmed plan provides for \$5,995.00 in attorney's fees to be paid through the plan. Plan, Doc. ##5, 23. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of \$5,891.00 and reimbursement for expenses totaling \$328.36. Order, Doc. #36.

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) plan funding issues and resolution by stipulation; (2) projected discharge and case closing; and (3) claim investigation and resolution. Doc. #41. 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 \$5,635.00 and reimbursement for expenses in the amount of \$313.01 to be paid in a manner consistent with the terms of the confirmed plan. The Trustee is authorized to pay all approved fees and expenses to the extent available through the plan.

4. [19-13251](#)-A-13 **IN RE: OSCAR/MELISSA GARZA**
[RSW-2](#)

MOTION TO APPROVE LOAN MODIFICATION
7-29-2021 [\[91\]](#)

MELISSA GARZA/MV
WILLIAM OLCOTT/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Oscar Edward Garza and Melissa Richer Garza (together, "Debtors") seek authorization to enter into a home loan modification agreement with Carrington Mortgage Services LLC, current servicer and authorized agent for Wilmington Savings Fund Society, FSB, as Trustee of Quercus Mortgage Investment Trust ("Creditor"). Doc. #91; Ex. 1, Doc. #95. Although Debtors allege to have attached as an exhibit the loan modification agreement, it appears that only a letter from Creditor indicating that Debtors are eligible to begin a trial loan modification period has been filed. Doc. #95. However, the confirmed first modified plan provides for the modification of the home loan with Creditor, and that plan was confirmed on May 7, 2021. Doc. #86. The loan modification lowers the monthly payment from \$1,433.69 to \$1,395.55. Decl. of Melissa Garza, Doc. #93.

This motion will be GRANTED. Debtors are authorized, but not required, to complete the loan modification with Creditor. Debtors shall continue making plan payments in accordance with their confirmed chapter 13 plan. Debtors must modify the plan if the payments under the modified loan prevent them from paying under the plan.

5. [16-12253](#)-A-13 **IN RE: MARLENE LOPEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
7-12-2021 [\[74\]](#)

MICHAEL MEYER/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Continued to August 26, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

This motion to dismiss was set for hearing on at least 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The chapter 13 trustee ("Trustee") seeks the dismissal of this case because plan payments are delinquent by \$1,720, the amount necessary to complete the 60-month plan. Decl., Doc. #76. Trustee also asserts that the chapter 13 plan provided that general unsecured creditors will be paid a dividend of 68% and to date have been paid 67.91%. Decl., Doc. #76.

In a late-filed opposition, which late filing has been permitted by the court, the debtor states that she caused the final payment of \$1,720 to be sent to Trustee via TFS on the afternoon of Friday, August 6, 2021. Doc. ## 80, 81 and 82. Based on the debtor's representations that the final plan payment has been made to Trustee, the court will continue the hearing on Trustee's motion to dismiss to give Trustee time to confirm the final plan payment has been made and, if appropriate, withdraw the motion.

If the debtor fails to come current on the final plan payment on or before August 26, 2021, this motion will be granted on the grounds stated in Trustee's motion.

6. [21-10171](#)-A-13 **IN RE: MICHELLE/MANUEL VALENCIA**
[MHM-2](#)

MOTION TO DISMISS CASE
7-9-2021 [[63](#)]

MICHAEL MEYER/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Continued to September 2, 2021, at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to September 2, 2021, at 9:30 a.m., to be heard with the debtors' motion to confirm plan.

7. [19-10875](#)-A-13 **IN RE: MARTHA JACKSON**
[PBB-2](#)

MOTION TO MODIFY PLAN
6-29-2021 [[49](#)]

MARTHA JACKSON/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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.

8. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-2-2021 [[160](#)]

MICHAEL MEYER/MV
RESPONSIVE PLEADING

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed an amended Schedule C on August 11, 2021 (Doc. #196).

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

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

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

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

DISPOSITION: Continued to September 16, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status report filed on August 5, 2021, Doc. # 156, the status conference will be continued to September 16, 2021, at 11:00 a.m. to be heard in connection with the motion for entry of a default judgment.

2. [18-14207](#)-A-7 **IN RE: ELMER/KATHLEEN FALK**
[20-1057](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
1-11-2021 [[30](#)]

SALVEN V. MOORE ET AL
PETER SAUER/ATTY. FOR PL.

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

DISPOSITION: Continued to September 16, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Because there is a motion to compromise controversy set for hearing in bankruptcy case #18-14207 on August 11, 2021, which would result in dismissal of this adversary proceeding, the status conference will be continued to September 16, 2021, at 11:00 a.m.

Not later than September 9, 2021, the plaintiff shall file a unilateral status report if the adversary proceeding is not dismissed as of that time.

3. [18-14207](#)-A-7 **IN RE: ELMER/KATHLEEN FALK**
[20-1057](#) [DW-2](#)

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
1-25-2021 [[31](#)]

SALVEN V. MOORE ET AL
MATTHEW OLSON/ATTY. FOR MV.

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

DISPOSITION: Continued to September 16, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Because there is a motion to compromise controversy set for hearing in bankruptcy case #18-14207 on August 11, 2021, which would result in dismissal of this adversary proceeding, the hearing on the motion to dismiss will be continued to September 16, 2021, at 11:00 a.m.

4. [18-14546](#)-A-7 **IN RE: LANE ANDERSON**
[19-1024](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT, JURY DEMAND
2-15-2019 [[1](#)]

MURILLO V. ANDERSON ET AL
RICK MORIN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 14, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status report filed on August 4, 2021, Doc. # 85, the status conference will be continued to October 14, 2021, at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than October 7, 2021.

5. [20-11147](#)-A-7 **IN RE: MARTIN LEON-MORALES AND MA ELENA MALDONADO-RAMIREZ**
[20-1040](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [[1](#)]

DE CASTAING ET AL V. MALDONADO-RAMIREZ ET AL
ROBERT RODRIGUEZ/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

6. [19-10952](#)-A-7 **IN RE: DAVID MUSE**
[19-1050](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT, JURY DEMAND
5-21-2019 [\[1\]](#)

MURILLO V. MUSE
RICK MORIN/ATTY. FOR PL.
DISMISSED 7/27/21

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on July 27, 2021. Doc. #54.

7. [19-13871](#)-A-7 **IN RE: JENNA LONG**
[20-1014](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
3-11-2020 [\[1\]](#)

LONG V. NELNET ET AL
NANCY KLEPAC/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

While defendants Navient Solutions, LLC (Doc. #21), U.S. Department of Education (Doc. #38), and ECMC (Doc. #55) have been dismissed, this adversary proceeding remains pending as to defendants Nelnet and Sallie Mae. Counsel for plaintiff should be prepared at the status conference to address how this adversary proceeding will be resolved as to the two remaining defendants.

8. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1023](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-26-2021 [\[1\]](#)

U.S. TRUSTEE V. NICOLE
JUSTIN VALENCIA/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 30, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Defendant's motion to dismiss having been withdrawn and a deadline set to file an answer no later than August 26, 2021, see #9 below, the court will continue

this status conference to September 30, 2021 at 11:00 a.m. to permit the parties time to complete their obligations in the Order to Confer on Initial Disclosures and Setting Deadlines (Doc. #5) ("Confer Order") prior to the continued status conference being held. Due to the filing and subsequent withdrawal of the motion to dismiss, the deadlines in the Confer Order are changed so that the parties shall conduct the Discovery Conference referenced in the Confer Order no later than September 9, 2021, and the discovery plan shall be filed with the court within 14 calendar days after the Discovery Conference is conducted.

9. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1023](#) [VL-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
6-28-2021 [\[11\]](#)

U.S. TRUSTEE V. NICOLE
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

ORDER: The court will issue an order.

Defendant withdrew the motion to dismiss on August 10, 2021. Doc. #25.
Defendant shall file and serve an answer to UST's Complaint no later than August 26, 2021.